

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) Case No. 1:16CR224
BOGDAN NICOLESCU,)
RADU MICLAUS,)
Defendants.)

CONTINUED TRANSCRIPT OF TRIAL PROCEEDINGS HAD
BEFORE HONORABLE JUDGE PATRICIA A. GAUGHAN, JUDGE
OF SAID COURT, ON TUESDAY, APRIL 9TH, 2019,
COMMENCING AT 9:00 O'CLOCK A.M.

Volume 12, Pages 2249 through 2430

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1 P R O C E E D I N G S

2 THE COURT: Please be seated, and good
3 morning, ladies and gentlemen. On behalf of the
4 Government, as you indicated yesterday, you have, in
5 fact, rested.

6 Is that correct?

7 MR. BROWN: That is correct, your Honor.

8 THE COURT: And on behalf of the Defendant,
9 Mr. Miclaus, Mr. Goldberg, am I correct that you are, in
10 fact, resting?

11 MR. GOLDBERG: Yes, your Honor, subject to
12 renewal of motions previously made.

13 THE COURT: And the same ruling stands.

14 On behalf of Defendant Mr. Miclaus, am I
15 correct, Mr. O'Shea, that you are, in fact, resting?

16 MR. O'SHEA: Yes, your Honor, subject to the
17 same things Mr. Goldberg talked about on behalf of my
18 client, Mr. Miclaus.

19 THE COURT: And all of the rulings
20 previously stand.

21 Ladies and gentlemen, we will now hear
22 closing argument of counsel, and as I indicated to you at
23 the outset of this trial, closing arguments are not
24 evidence. They are merely designed to assist you, and
25 because the Government has the burden of proof, the

1 Government is afforded two opportunities to address
2 you.

3 Mr. Brown will give his closing argument,
4 then Mr. Goldberg will give his; Mr. O'Shea his, and
5 then, the Government will have an opportunity to give
6 what we call a rebuttal argument.

7 But once again, keep in mind closing
8 arguments are not evidence. They are merely designed to
9 assist you.

10 On behalf of the Government, Mr. Duncan
11 Brown.

12 MR. BROWN: Good morning, ladies and
13 gentlemen. Thank you very much for paying such close
14 attention and being so engaged these past two weeks.

15 Thank you on behalf of Mr. Levine,
16 Mr. McDonough, Special Agent Lough, Special Agent
17 MacFarlane, and Ms. Chandler. Thank you.

18 Yvonne Liddy was not tricked — or I'm sorry
19 — Bogdan Nicolescu and Radu Miclaus tricked Yvonne
20 Liddy.

21 Bogdan Nicolescu and Radu Miclaus tricked
22 Daniel Saavedra.

23 Bogdan Nicolescu and Radu Miclaus tricked
24 Bonita Muhlenkamp.

25 Bogdan Nicolescu and Radu Miclaus tricked

1 Donald Patterson.

2 Bogdan Nicolescu and Radu Miclaus tricked
3 Allynn Stallings.

4 Bogdan Nicolescu and Radu Miclaus tricked
5 William Scott Hannon.

6 Bogdan Nicolescu and Radu Miclaus tricked
7 Donna Wolfe.

8 Bogdan Nicolescu and Radu Miclaus tricked
9 Larry Pool, Larry Kuehl.

10 Bogdan Nicolescu and Radu Miclaus tricked
11 Ashley Parton.

12 Bogdan Nicolescu and Radu Miclaus tricked
13 and deceived Donald Wertz.

14 Bogdan Nicolescu and Radu Miclaus tricked
15 Clint Bertke.

16 Bogdan Nicolescu and Radu Miclaus did not
17 trick the FBI, and Bogdan Nicolescu and Radu Miclaus will
18 not trick you today.

19 You heard from Special Agent MacFarlane
20 during his testimony. There were two main focuses of his
21 investigation: Identity, which was two paths, a human
22 path and a technology path, and when they met, arrests
23 were made; charges were delivered.

24 We will first talk about identity and about
25 the convergence of those two paths and what the evidence

1 shows from human sources and from technological sources.

2 What do we know from technology?

3 What did we see early on that we were able
4 to quite identify, and this is Exhibit 1741, that Master
5 Fraud and Minolta were very involved in auto listings.
6 Here we see there are 1034 auto listings.

7 We have Minolta m-i-n listing 947, 95
8 percent, 94 percent of all the auto listings in this
9 table provided by Minolta. We see Master Fraud, and
10 where do we see Master Fraud again, and we will talk
11 about this more in depth later the importance of the my
12 4, my 3 on the website interfaces.

13 We see Master Fraud and Minolta again. What
14 is this, a directory tree from the command and control
15 server, and what did we hear from multiple witnesses;
16 that this command and control server was where all of the
17 data, all of the Bayrob information was stored, kept,
18 organized, harvested, used, and operated from to use and
19 deploy the Bayrob Trojan, the Bayrob Trojan to further
20 all of their criminal schemes.

21 And what do we see here as work space?

22 Master Fraud work space, Minolta work space with AOL.
23 What's the importance of an AOL work space? Again, the
24 AOL work space, they used AOL for the virtual private
25 network, which allowed them to find a level of anonymity

1 and post things on the net, to post on or proxy into the
2 command and control server.

3 We see eBay. Obviously eBay was the heart
4 and soul early on of the Bayrob Trojan.

5 We see Yahoo hosting in both work spaces,
6 and the importance of Yahoo listing was that's where the
7 Bayrob Group, where Niculescu and Miclaus and the members
8 of their group, went to get false domain names so they
9 could register DPX, they could register and place things
10 on eBay because with a false domain name it is easier to
11 remain anonymous, because the filters were looking for
12 search words and certain patterns.

13 And if you could register a false domain
14 names, you could avoid those filters.

15 And anonymity was important. Anonymity was
16 what they used to trick all the witnesses who we ran
17 through in the beginning. Anonymity was what they hoped
18 to use to trick you today.

19 And how did they remain anonymous? It
20 started with their laptops, and what did they do? They
21 wouldn't just log on. They would use directional
22 antennas, and they would use directional antennae to
23 reach out a mile away somewhere in Bucharest, other
24 computer systems, other IP addresses.

25 And they would use that to step back from

1 their laptop, a level of anonymity once the directional
2 mike found a network that they could get onto. Sometimes
3 it was open.

4 You heard from Tiberiu Danet sometimes they
5 would have to hack into it. They would then get on the
6 web network and go to the dark web, another step of
7 anonymity, places like Tour that would take the IP
8 addresses, and they would change it so there was another
9 IP.

10 Then they would proxy on to an infected
11 computer, on a second infected computer, sometimes on to
12 a third infected computer for another two, possibly three
13 layers of anonymity.

14 Then, they would log on to the VPN like AOL,
15 as you heard from Owen Miller, and then from there, they
16 could log into their command and control server where
17 they felt Bogdan Nicolescu and Radu Miclaus felt so safe
18 behind all those layers of anonymity that they could use
19 their names Master Fraud, Minolta 9797, and they could
20 conduct their schemes.

21 They could e-mail to each other using their
22 monikers. They didn't encrypt it because they figured
23 those layers of anonymity between you and them was
24 enough. They were never going to get caught.

25 But you heard during the investigation the

1 FBI working with private researchers, working the RNP.

2 The Romanian National Police were able to
3 get and locate the command and control server. They were
4 able to go back, take a step back to the VPNs. They were
5 able to see those connections through Liam O'Murchu.
6 They were able to go back on the three, the two, the
7 one layers of infected computers that they processed
8 through.

9 They were able in their searches to find
10 directional antennae and a router after router after
11 router after router in every apartment. And ultimately,
12 they were able to circulate all the levels of anonymity.
13 So what you see today is what they truly were.

14 You can see Bogdan Nicolescu; you can see
15 Radu Miclaus, not behind all their technology, not behind
16 the server with 16 hard drives in it and dual power ports
17 and routers and directional antennae, but who they are
18 where they sit today.

19 They also found the other members of the
20 Bayrob Group, and you heard from the Bayrob Group. You
21 heard from all six of these members, and what did you
22 hear?

23 You heard when the anonymity was stripped
24 away, the members were able to identify each other by
25 name and by nickname, and they all used consistent

1 identifiers for each other.

2 You didn't hear, for instance, Bogdan
3 Antonovici say "I am Inzato" and then Valetin Danet come
4 in and say "no, no, no. I am Inzato."

5 No. They all knew who each other was. More
6 importantly, they all knew which jobs everybody had, and
7 what you heard on the stand from all of the Bayrob Group
8 members was that they each had individual jobs.

9 They didn't all try, the Government submits,
10 to come in and say, "well, no. I just posted a few auto
11 frauds." You heard with great specificity, with great
12 detail, technical detail what jobs they had.

13 You heard from Inzato, from Bogdan
14 Antonovici that the Bayrob blew his mind. Blew his mind.
15 He didn't want to have anything to do with the virus
16 itself. He didn't understand it. But he didn't stop
17 there.

18 He was the money guy. He said "yeah, I am
19 the money guy. I didn't understand the virus, but I am
20 the money guy," and that was his job, and you heard in
21 detail how he would use the names Master Fraud and
22 Minolta 9797 to arrange pickups for what, for bags of
23 cash because he was the money guy.

24 And the Government submits who would know
25 better than who Master Fraud and Minolta 9797 than the

1 guy that has to get the money to him, and that's
2 important in a criminal scheme to defraud people of
3 money. And that's Inzato.

4 He knew which car to get into to bring the
5 sack of money. That's what he testified to. He knew
6 most of the times he would go find Radu Miclaus, get in
7 his car, and drive out and trade a bag of money.

8 He did that with Master Fraud as well,
9 Nicolescu as well. You heard from Tiberiu Danet. You
10 heard from Tiberiu Danet about what his role was, and the
11 Government submits, the Government is not hiding from
12 this, he plays a role, a big role, absolutely.

13 He did a lot with the .PHP programming, he
14 admitted to that, and he admitted to the web interfaces
15 he created. He even said when they did different eBay
16 auto auction frauds to trick someone, it got interesting
17 for him because then he could use his database knowledge
18 skill to organize the Bayrob data, but it is the Bayrob
19 Group data.

20 He didn't say "I am running away from it. I
21 didn't know what I was doing because that isn't part of
22 the process." It interested him, but — and he did it.
23 And yes, you also heard that he got a deal.

24 You heard all these guys cut deals with the
25 Government. We are not asking you to invite them to

1 Thanksgiving dinner, but we are asking you to listen to
2 each of these people as inside members of the criminal
3 scheme.

4 And what did they keep telling you? Valetin
5 Danet, what did he tell you? He didn't say "well, I
6 don't know."

7 He said "I brought my brother in." He
8 didn't walk away from that. He owned that. If you
9 recall his testimony, he could have — I mean, if they
10 were just going to come in and tell the Government what
11 they thought we wanted to hear, the Government submits
12 there would be more minimization; not that I brought my
13 brother, but I brought my Master's Degree-holding brother
14 from his job holding at Google, I brought him in.

15 And then he discussed not only what he did,
16 which was making sure credit cards worked, and that they
17 are valid, but why that was important because those
18 credit cards supported the criminal structure.

19 Valetin Dima, Catalin Dima, very similar.
20 They were brothers, and they addressed in great detail
21 what roles they did. These aren't people trying to hide
22 behind, you know, let's play Marius Matei. No.

23 They all admitted who they were, they
24 admitted who they knew, and they admitted what job they
25 did.

1 And in doing so, they all showed that the
2 common denominator was Bogdan Nicolescu. Bogdan
3 Nicolescu brought everybody in. He brought everybody
4 into the group.

5 He showed everybody his Trojan. It is
6 called — it is called my defense. He showed everybody
7 the Trojan. He assigned everybody in the group their
8 job. He made all those decisions, and we also heard
9 Radu Miclaus was there from the beginning; he was there
10 at the end.

11 And what was he doing at the beginning? He
12 was doing eBay auction frauds, not a small role, that's
13 what got the virus out to the world. That's what brought
14 the money in. That's not a minimal role, and he was
15 doing, as you saw from 1741, more than anybody else and
16 what do we know — and jumping ahead a little bit — he
17 was involved in the Ypool and the cryptomining.

18 He was involved in every step. He was
19 involved with the money. He was in it for the money just
20 like all of them. It was not a minor role. Even though
21 he might not have been writing codes, he was benefiting
22 from the codes. He was using the codes, he was applying
23 the codes, and the codes were designed to be applied, and
24 he was profiting from them.

25 That's the inside view. That's the person's

1 view, and we heard the testimony from Special Agent
2 MacFarlane that, as much as there is a human path, there
3 is also a technological path, and the technological path
4 started with Owen Miller from AOL.

5 I don't remember where he works right now
6 two or three jobs later, but that's Owen Miller. And
7 what did Owen Miller see? He saw something very
8 important, some very important things.

9 He started to see e-mail traffic. He saw
10 things between amightysa, Master Fraud, Minolta 9797,
11 other members of the group on AOL, and he started,
12 independent of the FBI and independent of Liam O'Murchu
13 at Symantec, he in his role at AOL, started to look
14 at a fraud scheme and a fraud pattern based on the
15 e-mails.

16 And during his investigation, he saw a
17 log-in attempt at GMX, and this is what Mr. Levine called
18 mistake No. 1 in the trial, and you heard it during the
19 trial.

20 And I think you heard plenty of testimony
21 about mistake number one here in trial. I am going to do
22 it again because mistake number one was a third of the
23 way to the technical path showing what the inside human
24 path showed us as well, and that is that raduspr,
25 r-a-d-u-s-p-r, tried to log on to PMS.com, typed in

1 radu.spr, typed in his password, kill 66 bill, hit
2 return, and he made a mistake.

3 He made a mistake like the Government would
4 submit is the kind of mistake we are asking you to use
5 your common sense and everyday experience to analyze. He
6 typed in the wrong user name and hit the wrong password.
7 That's it.

8 He recognized the mistake because it didn't
9 go through, tried to type it in again. What we have here
10 is, he tried to type in Minolta 9797 at GMX.com, kicks
11 back. Third time is a charm, types in Minolta 9797, kill
12 66 bill, logs on to GMX.com, but that was enough to allow
13 Owen Miller to see radu.spr open Minolta 9797 and link
14 those two identities together.

15 Liam O'Murchu is working at Symantec,
16 independently working at Symantec, comes to together, he
17 comes together in a meeting with the FBI. They compare
18 notes, and Liam O'Murchu says there's a link between
19 raduspr and Minolta 9797 and here, let me try something.

20 He doesn't open search source, open source
21 search. I haven't been able to say that for two weeks.
22 I can't say it today. It says open source search was the
23 first time.

24 He finds the Twitter, just like typing in
25 raduspr. What's important and of value to the Twitter

1 page? Well, there is a sky-diving picture, and that will
2 become important, and Twitter handled radu.spr, and you
3 heard from Liam O'Murchu.

4 You also heard from Special Agent MacFarlane
5 in their searches this is not a common name. This is not
6 brown 1, 2, 3 or Cleveland Rocks ABC. Radu.spr was
7 something they did not see.

8 And what are the two tweets he has, the only
9 two tweets has, and what does it say? They are about a
10 Ypool, and we will talk about Ypool at length later, but
11 it is a cryptomining server and application that awards
12 cryptomining for the larger processing power you bring to
13 the pool, right?

14 So the more power you bring into this
15 cryptomining application, the more of the credit you get
16 back when the algorithm is solved.

17 So he is asking about Ypool. Is it down?
18 Is it back up? Anybody know what happened? The
19 Government submits to you this is consistent with
20 Radu Miclaus's behavior throughout this entire scheme,
21 2007 until 2016. He was asking because he wanted the
22 money.

23 He was involved in the cryptomining for the
24 money. He saw how the botnet was developing. He saw how
25 the code was evolving, how the use of the botnet was

1 evolving, and he wanted to maintain his financial stake
2 in the Bayrob Group.

3 O'Murchu also found consistent with the
4 Twitter page, consistent with what Owen Miller saw,
5 radu.spr, like skydiving, like Twitter page, lives in
6 Bucharest, Bucharest, Romania.

7 So at this meeting, Special Agent
8 MacFarlane, Special Agent Diaz take this information, and
9 they do a little more open source searching, and what do
10 they find?

11 They find radu.spr again on a website where
12 you can post to get jobs. And what kind of jobs is he
13 looking for? C programming, .PHP, that's something we
14 are going to hear a lot when we get a little bit deeper
15 into the C & C server.

16 Python, not the snake program manager.
17 Jobber, JavaScript. What else? He has got Linux. This
18 is somebody with a skill set, with a knowledge base that
19 is consistent with what the Bayrob Group was doing, the
20 tools Bayrob was using to make their criminal enterprise
21 successful.

22 He went on. Special Agent MacFarlane then
23 subpoenaed Yahoo based on the radu.spr @ yahoo.com
24 e-mail, and you get back returns radu.spr and Yahoo.com
25 backed up by radu.spr @ gmail.com.

1 The importance of that, whatever is going
2 into Yahoo.com was important enough that he wanted to
3 make sure he could get back into that account, and that
4 the information going through radu.spr's account is
5 important enough, Radu Miclaus, that he wanted to protect
6 it and back it up. We also saw his home address,
7 Tiparnitei 31 A, which is in Bucharest

At this point in the investigation, they had monikers, amightysa, Master Fraud, Minolta 9797. They had a good idea of a core group of actual humans, Bogdan Niculescu, Tiberiu Danet, and Radu Miclaus.

17 They could connect Radu Miclaus to Minolta
18 9797. They still were not sure who was Master Fraud and
19 amightysa, Danet and Nicolescu.

Now, the Government does submit to you at this point the way this is charged, we charged conspiracies, and I will talk to you more about the charge in a moment, but with the conspiracy, we had three members working together.

25 We had, the Government submits, evidence

1 showing these three working together. The Government
2 submits evidence of these identities and monikers were
3 working together in a criminal scheme to support the
4 charges.

5 But the investigation wanted to make sure we
6 knew for certain, not just that they were in the group
7 because the Government submits at this point we are
8 confident they were in the group, but who was amightysa,
9 who was Master Fraud, so we would know which person was
10 responsible for which criminal acts.

11 Ryan MacFarlane in his investigation found
12 out that Danet Tiberiu worked at Google. He had an
13 internship at Google. He liked to travel, so they put an
14 alert out on — with DHS, and they found out in 2015, in
15 May of 2015, he was going to travel to America, to Miami.

16 When he came into the country, and here he
17 is, gray shirt, gray pants, black hair, Tiberiu Danet,
18 when he came into America, they searched his phone, and
19 what did they find? This is Exhibit 367. What did they
20 find on the phone?

21 They found chats. These are chats, and this
22 is conversation between Romeo and the phone had Romeo S
23 user. It was Danet's phone, and Romeo was Danet, talking
24 to Ferdy, and Ferdy mentions whose address?
25 Radu Miclaus's.

1 So now we have another moniker for Miclaus:
2 Ferdy. We see more chats. This was something named obe.
3 And ladies and gentlemen of the jury, you will be getting
4 a lot of these chat logs.

5 The Government urges you to review these
6 chat logs because in these chat logs is a conversation
7 between Romeo Danet and obe who we now know is Bogdan
8 Nicolescu.

9 And in these chats — and we have circled
10 same of these — talk about ports, they talk about ePoll,
11 and we heard that ePoll from Special Agent MacFarlane was
12 a tool the Bayrob Group used to make sure that botnet was
13 working. It was like a self-check.

14 It was a way to make sure everything was
15 online, everything was operational, that the commands
16 that were being pushed out from the command and control
17 server were being received, were being analyzed proper,
18 were being executed, and the information could come
19 back.

20 We have chats between Romeo and obe about
21 ePoll. We have chats about miner force. We will talk
22 again I promise a lot more about miner force, which was a
23 cryptomining program designed not just to cryptomine on a
24 botnet but to keep the program running in the background,
25 so the mining continually happened regardless of what

1 else the computer was doing.

2 And remember, recall the testimony of
3 Tiberiu Danet when you are looking at this, his phone
4 capitalized for the first time. Bogdan Nicolescu's phone
5 does not, so if you see capitalizations, most likely
6 that's Danet. If you see lower case, that's Nicolescu.

7 The Government contends, if you read through
8 the chats — and you will have them back in the jury
9 chambers — amightysa more often than not is talking to
10 Bogdan Nicolescu.

11 Danet is talking to Bogdan Nicolescu asking
12 him advice on how to work the program, how to develop a
13 program, how to sort of guide his way through developing
14 what is needed forth Bayrob Trojan.

15 Amightysa, Tiberiu Danet, is not saying this
16 is going to happen; this is how we do it. He is talking
17 in these chats the Government suggests, the Government
18 submits is consistent with how he testified, which was
19 Bogdan Nicolescu gave me the virus.

20 Bogdan Nicolescu hired me to do things. He
21 gave me parameters. He gave me instructions on what to
22 design, how to design it, and what were its
23 functionality. That's what he was doing.

24 The Government submits that is consistent
25 with these chats. It was a relationship where Nicolescu

1 is here, giving orders, giving commands to amightysa.

2 And then, we also have this, and again not
3 every communication is in command, not every
4 communication is hierachal because Danet didn't say
5 things like "well, look, I got one card of 20,000 pieces
6 of spam, and just to let you know, I put them in
7 Vanghelie."

8 Vangelie, according to Tiberiu Danet, was a
9 Poonish mayor of Bucharest, so where do you put the bad
10 cards? You have put them in a file named after
11 Vanghelie. Armed with that and the Government submits
12 even in the tech cases, sometimes the FBI has got to be a
13 cop, right?

14 Sometimes we have got to pull ourselves out
15 of the command and control server. We have got to pull
16 ourselves out of JavaScript, and the FBI does what the
17 FBI does, which is they review subpoena returns, they
18 review pen trap and trace log ons.

19 And they look at that data, try to confirm
20 and look at that data, Ryan MacFarlane, Stacy Diaz, and
21 look at that data, and then they look at the travel
22 records.

23 And they compare when Tiberiu Danet was
24 traveling, when amightysa was logged on, and what do they
25 find? They found essentially, again consistent with what

1 the Government submits practically every member of the
2 Bayrob Group, bad guys take vacations, and when Danet is
3 on vacation, amightysa doesn't log in.

4 Based on the totality of what they have been
5 saying was a chat with the communications. This
6 confirmed for the FBI who amightysa was. Amightysa was
7 Danet because when Danet was on vacation, amightysa
8 didn't sign in.

9 So now, they had Miclaus as Minolta 9797.
10 They had Danet as amightysa; Bogdan Nicolescu as Master
11 Fraud. How did they further confirm that?

12 At the time of arrest, seizures were done,
13 hard drives, laptops, stand-alone hard drives, phones
14 seized from the apartments of Miclaus and Nicolescu, and
15 what did they find?

16 On a phone owned by Miclaus. They found a
17 Jabber chat. They have found a chat between Miclaus and
18 obe, and they had Nicolescu's phone. Nicolescu's phone
19 had obe as his log-in name.

20 We heard plenty of testimony about who obe
21 was since high school and why they called him obe. And
22 obe was Nicolescu. What does this tell us? What does
23 this chat tell us between obe and Miclaus?

24 Miclaus is using the wrong names again, just
25 like when he tried to log on as radu.spr on his Minolta

1 account. He is texting abe about Minolta and what do we
2 know by this? We know that Master Fraud is due 2352
3 Romanian RONs. We know that Minolta, Minolta is due
4 12,000 lei. He is due a lot more. And how do we know
5 this? Well, we see Master Fraud and Minolta.

6 And where we see Master Fraud and Minolta
7 shortened like that before? Well, we see it on the
8 account spreadsheet, and this is Exhibit 1208. This is a
9 spreadsheet designed by Tiberiu Danet about the workings
10 of the mules and the return of money by the mules to
11 Romania.

12 And when the money came in, it was broken
13 down by which mule was sent which amount of money, and
14 then it was aggregated and who gets what cut. Here we
15 get MF 25 percent. We get Minolta, 10 percent of all the
16 action frauds.

17 And again, just like the information and the
18 testimony of Bogdan Antonovici, the Government submits
19 when they are talking about money, they are going to get
20 the identities right because that's what this is about.
21 This is about money.

22 This is a scheme to defraud Americans of
23 money. So they don't get the names right. They are not
24 going to get the names right. They are not going to
25 call, I don't know, Danet Master Fraud because Valetin

1 Danet doesn't get 25 percent. Valetin Danet will get 15
2 percent. They are not going to make that mistake.

3 They might make a mistake every once in a
4 while, logging on or not tripping an attachment, but this
5 is money. This is why they are doing it. This is why
6 they are doing it. Where do we see it again? This is,
7 again, we are divvying up the work here. The Bayrob
8 Group is divvying up the work here.

9 Who is responsible for what ones, and you
10 heard testimony, you are responsible for calling up all
11 that information. Minolta is responsible for 947.
12 Master Fraud is responsible for 38 of those.

13 And remember if Minolta is going to base his
14 cut on what he is doing. He is going to get that number
15 right because it is about the money. We put all that
16 together, we have the arrests, and we have the charges,
17 and your Honor, if I could just have the Elmo up very
18 briefly?

19 THE COURT: Certainly.

20 MR. BROWN: Thank you.

21 When we talk about the charges, we are
22 talking about a timeline, that expanse from 2007 to 2016.
23 So we are talking about conspiracy that spans the entire
24 life of the crime.

25 They might change, they might have all —

1 here we see on top we have some auction fraud that turns
2 into cryptomining, but those frauds used the
3 Bayrob Trojan as a fundamental tool of their criminal
4 scheme.

5 And just as we are talking about conspiracy
6 during this time, we are talking about criminal behavior
7 for each of the members of the Bayrob Group that make
8 them responsible for each other.

9 So what Bogdan Nicolescu does under
10 conspiracy law is criminal conduct for Radu Miclaus. It
11 is criminal conduct for Marius Matei, and it is criminal
12 conduct for all of the members of the Bayrob Group.

13 If you were in that criminal conspiracy and
14 you agreed to it and you act consistent with the goals
15 and the intent of the criminal conspiracy, you are on the
16 hook for the actions of everybody else.

17 And that, ladies and gentlemen of the jury,
18 is what we have here. We can tell you it is Master
19 Fraud, and we can tell you it is Radu Miclaus, its
20 Minolta 9797, but we can tell you their jobs, tell you
21 that they are in the conspiracy.

22 So don't, again, be tricked by the attempt
23 to hide identities through routers or hide identities
24 through arguments that, well, on Tuesday, it could have
25 been this guy, and on Wednesday it could have been that

1 guy, and you know, six people can log on to the command
2 and control server.

3 The fact of the matter is everybody in the
4 Bayrob Group could get on to the command and control
5 server. Everybody in the Bayrob Group could use the
6 command and control server for their purpose. Everybody
7 in the Bayrob Group from 2007 to 2016 knew what the
8 Bayrob Group was doing.

9 And they wanted to be part of it. The
10 command and control server, the log in to this command
11 and control server, it was not an open door on the
12 street. They had seven steps to protect their anonymity,
13 and even then, you had to know where to go, you had to
14 know passwords.

15 You had to have a user net. For an argument
16 to be made that you could just log on to the command and
17 control server, Brian McDonough could do that. I could
18 type — that's like saying I gave him an invitation to a
19 party, but I didn't tell him where it was, when it was,
20 how long it was or what day.

21 They hid the command and control server.
22 They made it hard to get into unless you were a member of
23 the group, and if you were a member of the group, you
24 were part of the conspiracy.

25 And what conspiracies are we talking about?

1 Count 1 wire fraud conspiracy. You heard —

2 THE COURT: You want it on the front
3 table?

4 MR. BROWN: Yeah, for everybody.

5 THE COURT: Oh, I apologize. I thought you
6 wanted it on the rear table.

7 MR. BROWN: Oh, thank you.

8 Wire fraud conspiracy. We heard there were
9 three private sector researchers who started their own
10 separate investigations into the Bayrob scheme. You
11 heard from Liam O'Murchu who named it.

12 He works for Symantec, and his job is to
13 monitor on behalf of his client what viruses are out
14 there and protect them from viruses. He found a virus he
15 called the Bayrob Group.

16 Here is Owen Miller, Owen Miller who was
17 working at AOL at the time, and he identified chat
18 traffic over the AOL network. He flagged it. He was the
19 one who obviously identified radu.spr.

20 Then, we have Chris Drake who noticed that
21 there was a lot of traffic, that credit cards were going
22 back, and when he looked into why the credit cards were
23 not being processed properly, that they were stolen, and
24 he suspected that this was a fraud scheme, so he started
25 looking into it.

1 They all found unique pieces of information
2 that when they met with the FBI, the FBI was able to take
3 a step back, combine and use in their investigation, but
4 what they found and what they all talked about was a wire
5 fraud conspiracy.

6 A wire fraud conspiracy is a criminal
7 artifice or design, a fake scheme to get something of
8 value from somebody, money using a wire, electronics,
9 e-mail, bank wires, electronic communications to trick
10 somebody, to deceive somebody into giving them money, and
11 what did they see?

12 At the heart of this, at the very beginning,
13 they saw eBay fraud. They saw eBay fraud, and how did
14 they know it was fraudulent? Well, they looked at things
15 like the picture viewer, and what was the importance
16 about the picture viewer?

17 Two things: One, it didn't exist until the
18 Bayrob Group invented it. Bogdan Nicolescu invented the
19 picture viewer, and why did he invent the picture viewer?
20 Because once you click on the picture viewer, the virus
21 was launched. This was the vehicle for the virus.

22 What else did they see that was fraudulent?
23 Well, how do we know it is wire fraud? Well, we have
24 Yahoo mail right there. They saw other indicia of fraud.

25 Look at the top rated seller, 106. Yvonne

1 Liddy bought a car from a seller at 106 stars. Daniel
2 Baker bought a car with 106 stars. The Government
3 submits 106 — you know, you can't make everything
4 perfect on a template. Sometimes you have to use some
5 generic stuff.

6 You saw through Exhibit, I believe, 1170,
7 maybe 1177 as well, Eugene Oregon, very popular place to
8 list cars, or was it because of Bayrob templates? The
9 Government submits it was Bayrob templates.

10 And what was the biggest clue that there was
11 a scheme to defraud, an artifice to defraud buyers?
12 Well, there was eBay escrow, right? There was this
13 payment plan under the agreement.

14 You could see in their chats where the
15 buyers see eBay and a way to buy cars, and you could see
16 in their fake chats when the virus launches, fake chats
17 that says eBay escrow is fine. Use eBay escrow, and what
18 do we know about them?

19 They were templates within the command and
20 control server that were sustainable modified templates
21 that the Bayrob Group could just plug into a chat, and it
22 would sound in very good English, very convincing
23 English, exactly what the seller wanted to hear.

24 How do we know it is an artifice to defraud?
25 Because when they would send the check, they would put

1 "verified asshole" on it. That's not a real scheme.
2 That's an intent to defraud. That's contempt for the
3 victim.

4 EBay option fraud, and how else do we know
5 about this? Because if they did avail themselves to fake
6 eBay escrow and went through all the steps, and we were
7 talking about numbers in the opening, and the defense had
8 numbers in the opening? How about zero?

9 Zero is the number of cars that were ever
10 delivered to any buyer who tried to buy a car using the
11 eBay virus, zero. They never had any cars. Tiberiu
12 Danet said they never had any cars.

13 Bogdan Antonovici said they had no cars.
14 There were no cars. That's your scheme to defraud.
15 There were no cars delivered. Don Patterson didn't get a
16 post to track his, nobody got cars, and Yvonne Liddy
17 didn't get her Jeep.

18 Here is your chat, and again, what are they
19 trying to do? They are trying to calm people, they are
20 trying to get the person to send the money. Remember
21 back to William Scott Hannon, the biggest sceptic in the
22 world, and he wanted to know this and that.

23 Did they tell him? They told him what he
24 needed to hear to get the transaction done public domain.
25 Then, on this page, the Government submits 1180 here is

1 your wire fraud. All the transactions, payments must be
2 made using bank-to-bank electronic wire transfer, wire
3 fraud.

4 And here are your victims. Here are the
5 victims you heard from who were at home by the chats, who
6 were at home by the big templates into accepting money.

7 Yvonne Liddy, the nurse going to school with
8 two more children who needed a car big enough to have two
9 baby seats in the back;

10 Daniel Saavedra trying to buy a nice car, he
11 was deceived;

12 William Hannon, Donald Patterson, they were
13 deceived by their money mules. Donna Wolfe and Ashley
14 Parton both testified they were looking for part-time
15 work.

16 Donna Wolfe was between out-of-town jobs.
17 Ashley Parton was taking care of family, wanted to
18 work-at-home situation. And what did this scheme to
19 defraud include, this conspiracy? It included websites
20 from KPL, from U.S. wires from MIPL, from Yahoo transfers
21 even.

22 Come be a transfer agent. Work from home.
23 All you have to do is send money to our European office
24 via Western Union, and these two mules were deceived.
25 You heard their testimony. They didn't know that this

1 was stolen money.

2 They didn't know what they were doing, and
3 you also heard from Valetin Danet, and we will talk about
4 his role a little bit longer — a little bit later, but
5 Valetin Danet was one of the ones responsible for doing
6 the chats, for convincing people to send the money.

7 Now, the next counts are very much related
8 to conspiracy to commit wire fraud. They are substantive
9 counts to wire fraud. What do we mean by that? Is it
10 acts, specific fraudulent wire transfers.

11 How do we show that? We show that, first,
12 in Exhibit 1208, an e-mail from Valetin Danet to his
13 brother about all of the mule transactions that were
14 recorded for a time share, and who do we see?

15 We see Donna Wolfe, Donna Wolfe having money
16 wired into her account here in Cleveland, then was taking
17 that money to Western Union, wired an amount to Europe.
18 Once it got to Europe, it was being picked up by other
19 money mules, and then eventually, it was being sent back
20 oftentimes via Bogdan Antonovici to the Bayrob, right?
21 It was passed from car to car directly to Miclaus or
22 directly to Nicolescu.

23 And here at 1208, you can see all of the
24 Donna Wolfes. And you heard Donna Wolfe testify about
25 all of the transactions. You heard Ashley Parton testify

1 about her transactions as well, and you saw Count 2,
2 Donald Patterson, you heard his testimony. You heard how
3 he wired money.

4 You heard how he was tricked, how he was
5 deceived. And again, we see Donna Wolfe getting money
6 from Mark Miller; Donna Wolfe getting money from Tom
7 Cavron; (sp) Donna Wolfe going through each count of the
8 2 through 13, the detailing how she got money into her
9 account and transferred to Europe based on instructions
10 given to her by the Bayrob Group. They had used the name
11 Martin Steinberg, but Steinberg. That's who it was. It
12 was the Bayrob Group.

13 There is Donna Wolfe, and there is
14 Tiberiu Danet, oftentimes the person she was chatting
15 with. That's the face of Martin Steinberg. Again, did
16 he say it was not me? No, he said he was Martin
17 Steinberg. He said he was responsible for that.

18 And when the money came in, what did the
19 Bayrob Group do? They tracked it. They organized it,
20 followed it to make sure they got the money, right? Here
21 is what is referred to as to the amount on the
22 spreadsheet.

23 And you can see the breakdown of lei in
24 Europe, and sometimes there are tables of lei or U.S.
25 dollars in Europe. How much money were they getting?

1 They were getting amounts in of \$3,000 in chunks,
2 reactivating it, and breaking it up within the members.

3 And we have MF, we have Minolta, we have all
4 the members getting their cut because, again, this was
5 about the money. We have highlighted again Minolta and
6 Master Fraud.

7 Each count, the counts that Donna Wolfe
8 testified to, Counts 2 through 13, this breakdown is
9 about those counts.

10 Count 14, computer fraud and abuse of
11 conspiracy. I have to take a sip of water.

12 (Pause.)

13 MR. BROWN: And what are we talking about?
14 We are talking about the Bayrob Trojan getting on
15 people's computers and making them run slower, making
16 them crash, making them break and getting on to the
17 infected computers without access because that's what the
18 Bayrob Trojan did.

19 It snuck in through a spam, snuck in through
20 an attachment, and it allowed the Bayrob Group to do
21 both, designed by Bogdan Niculescu to steal information,
22 credit card information, personal information, port
23 information, SOCKS ID information.

24 The government submits that's how you
25 connect to botnet. That's how you get power. That's how

1 you enlarge your computing power, and once you start
2 getting large computing power, then you can go start
3 bitcoin money. Then you can start cryptomining and start
4 making money, and what happened in 2013? They made that
5 evolution, and that's what Count 14 is about. It is
6 about infection; it is about harvesting, and it is about
7 evolution.

8 How did it start? We talked about the eBay
9 fraud, but they also used Western Union. Click on this
10 link, and you have \$1,500 waiting for you. Click on this
11 link. You have got a year of free security. Who
12 wouldn't want free security?

13 And you heard other examples, too, by the
14 way. Click on this link, and you can get a good laptop
15 at Wal-Mart. And how did they organize this? What did
16 they do once you click on that link, once the virus was
17 on your computer?

18 You heard, well, they started organizing
19 this information, and this is a table that is called a
20 ping-view table, I believe. I believe Tiberiu Danet
21 admitted he made it.

22 But what did it do for the members of the
23 Bayrob Group, Bogdan Nicolescu, Radu Miclaus, and gave
24 them the ability to control tens of thousands — hundreds
25 of thousands of computers because by the end of 2013,

1 '14, '15, '16, the investigation showed the Government
2 submits we are really talking about three or four
3 members, right, three or four members running the botnet,
4 and tens of thousands — hundreds of thousands.

5 And I believe at the end Liam O'Murchu said
6 it was over 400,000 computers run by our people, and what
7 did it show? Well, it shows which computers, which
8 infected computers are up and running, how long they have
9 been up and running, what their functionality is and what
10 it can be. Here you heard testimony about the little box
11 with the camera that clicked, that they would take
12 screenshots, and you heard testimony about what the
13 importance was of the screenshot.

14 It was a way to make sure the botnet was
15 working properly, a way to check it, and if not, let's
16 see what's happening on that computer. You could check
17 boxes to harvest credit card information, so the command
18 and control server would send a program out to harvest
19 credit card information from a computer or order that
20 computer to go out and send spam to harvest credit card
21 information and send it back to the command and control
22 server. That's what Count 14 is talking about.

23 Unauthorized access to computers, planning
24 programs on the computers to either use the computer for
25 its own purpose or to harvest and gain information from

1 that computer, and the Government submits how else did
2 you see it?

3 You saw it in Exhibit 2255, which was
4 Special Agent's MacFarlane's T-III view of the command
5 and control server checking to see where the miner force
6 was and running for how long?

7 That was a wire view, live view of the
8 crypto miner force program running. That was consistent
9 with his analysis of Exhibit 2067, a 19-page document.
10 He testified that was a Bayrob Group virus.

11 That was an actual working virus, and on
12 pages 18 and 19 of that virus, what it talked about was
13 miner force, was ePoll where all the functionalities that
14 were making a computer be able to cryptamine and also
15 check, send information back to the command and control
16 server that it was cryptamining properly. That's Count
17 14.

18 Count 14, also when you read it, it will
19 have a section that says that the program damaged or
20 impeded the operation of the computer. Ladies and
21 gentlemen of the jury, you heard testimony from
22 Clinton Bertke from Fort Recovery, Ohio.

23 Luckily, he knew the computer guru of
24 Northwest Ohio, and he had to take his computer to be
25 looked at by a computer guru. Lynn Stallings had to go

1 take her computer because she had a blank screen.

2 Liam O'Murchu at Symantec said his computer
3 was practically impossible to use. That's damage.
4 That's harm to a system.

5 Count 15, trademark conspiracy. Who did we
6 hear from? We heard from the trademark holders. We
7 learned all about the Wal-Mart matter, right? The purple
8 Yahoo exclamation point. We heard about all of the
9 different trademarks dual owned and why was that
10 important?

11 Why are the trademarks important to the
12 Bayrob Group? Why was a violation of a Western Union
13 trademark important? Because it gave the virus
14 legitimacy, right? If you got an e-mail signed Bogdan
15 Nicolescu, give me your credit card information, send it
16 to Romania via directional antenna, you wouldn't do it.

17 But you click on Western Union because you
18 got \$1,500 coming back to you, you click on to some
19 security because security is good, you apply for a job at
20 Yahoo transfer because Yahoo transferred per the
21 trademark, looks legitimate, that's how they got you to
22 click in.

23 They needed the trademark to convince people
24 to be victimized by their fraud scheme to, in fact, harm
25 the users. Google same thing. Type in your credentials.

1 You wouldn't know because that Google trademark was
2 virtually indistinguishable from the real Google
3 trademark.

4 Same thing with Yahoo again, and of course,
5 it always comes back to eBay, right? The eBay trademark
6 they had to violate because they were doing eBay auction
7 fraud. You wouldn't buy a car — honestly, we are in
8 Romania. We don't like Americans. We want your money.
9 We will find a car for you. No. You wouldn't send that
10 money.

11 But you would if eBay says this is a
12 legitimate auction. You would if you had the escrow
13 option to protect your payment, and you would if during a
14 live chat you had a live chat from eBay, right, and you
15 know it is eBay because they have the logo.

16 That's aggravated identity theft. Just for
17 a moment keep trademark in mind. What is aggravated
18 identity theft? Aggravated identity theft is quite
19 simply taking personal information like credit card
20 information from a person, an actual person, and using
21 other information from that real person to use or possess
22 the personal information.

23 So it is credit card data supported by a
24 name, an address, a phone number, whatever is needed to
25 use that credit card in addition to the credit card

1 number, and they used or possessed, used or possessed
2 without authorization.

3 And who did we hear from? What did we see?
4 Well, Count 18, Donald Wertz, and we heard from him
5 yesterday, and we heard this yesterday, and I know we are
6 jumping ahead to Count 18, but this is the trademark
7 violation.

8 Donald Wertz who came right from work said,
9 yeah, I logged on to Facebook one night. I saw the
10 Facebook page. It looked legitimate. I saw the Facebook
11 sign and saw the logo, so I typed in all my information.
12 I typed my credit card. I typed my address. I typed in
13 my phone number, and that was that."

14 We hear Wal-Mart, again, Wal-Mart false page
15 trying to get credential information. And again, it is
16 credit card information, it is name, expiration date,
17 CCV, the security code, your name, your address on your
18 monthly statement, your city, state, postal code, your
19 phone number, all the information you would need to use a
20 credit card online to avoid detection.

21 First, who do we hear from? First, we heard
22 from are Clint Bertke, Fort Recovery, Ohio, trying to buy
23 a truck. We heard from Bonita Muhlenkamp who used to
24 like to surf the web with her husband Terry. We heard
25 from Don Wertz who logged on to Facebook, put in credit

1 card information, and we heard from Lynn Stallings whose
2 husband likes to buy cars, shops for them everyday.

3 She was always having to watch him and
4 always make sure that he is not buying, A, not too many
5 cars, and B, not spreading his information out too much,
6 and Larry Kuehl who was looking for a car himself or for
7 his daughter.

8 And what do we see in Exhibit 1429? We see
9 how the credit card information, when stolen, when
10 harvested was used, and it is not just a list, and you
11 will see a list in a minute, but this is what made the
12 Bayrob scheme so effective.

13 They didn't just take information. They
14 didn't just steal information. They organized it, and
15 they used it, and they made sure they could access it and
16 analyze it and apply it to make the criminal scheme
17 successful and self-perpetuating.

18 They did things like they created a web
19 interface where the credit card information, if we look
20 here, was typed in, name, credit card, CCV, all that, and
21 you could update it here in the right-hand column, but
22 then, you also had notes.

23 Why do you have notes? So you can check
24 credit cards out because the Bayrob Group was a group.
25 They were working together. So Minolta, when he needed a

1 credit card, would go into the data basis here on 1429,
2 and he looked to see which credit cards were good and
3 which credit cards weren't checked out.

4 How do we know that? Well, because we got
5 Minolta's notes. Minolta auto shopping, but there is
6 room for more. He says that three, four, five times.
7 Minolta to be tested.

8 We see members of the group checking out the
9 cars, and what are they doing? They are shopping for
10 things on behalf of the group, not groceries, but server
11 space. They needed postings, they needed extra domain
12 names.

13 They needed to register the commercial
14 infrastructure, the rental space that the group needs to
15 continue their scheme. Where do you see it? Well, here
16 is Clint Bertke, right? Here is his address highlighted
17 in pink, yahoo hosting.

18 And the Government submits that's what they
19 are going to use as far as credit cards if they didn't
20 already use it, regardless they possessed all the
21 information that is needed to sustain aggravated identity
22 theft.

23 Here is Terry Muhlenkamp, Bonita
24 Muhlenkamp's deceased husband, all her credit card data,
25 her address, her name. They possessed everything they

1 needed of the Muhlenkamp credit card; same with
2 Don Wertz. They possessed his name, his address,
3 credit card information, phone numbers, CCV, expiration
4 date.

5 Lynn Stallings, here we see Minolta, checked
6 her card out. They can check out someone's card, North
7 Canton, Ohio, with a phone number. It is a 330- number.
8 She recognized it, and it is her credit card.

9 And then, Larry Kuehl, and this is an
10 example again of the Bayrob Group using criminal
11 proceeds, stolen credit cards to support their criminal
12 infrastructure. We see Larry Kuehl with Minolta and then
13 Radu Miclaus checking out that credit card to three
14 charges, to Media Temple, which was a way of domain
15 registration to support the Bayrob Group's criminal
16 enterprise.

17 Money laundering conspiracy:

18 There are multiple theories online but
19 moving money out of the United States to avoid detection
20 that was earned in a criminal scheme. Its use of money
21 in a criminal scheme to support the criminal acts within
22 that scheme.

23 So again, you use the credit cards to buy
24 service space. You use the credit cards to buy domain
25 registration names. Use of money mules to send money out

1 of the United States.

2 And it is not just a straight wire to Bogdan
3 or Radu, right? They went through the wire transfer
4 process. They had fake companies. They had mules whose
5 bank accounts shut down when people were investigating
6 them.

7 Nicolescu's bank account wasn't shut down.
8 Miclaus's account wasn't shut down. Ashley Parton's
9 house was raided. Donna Wolfe's bank account was shut
10 down because they thought they were working for KPM or
11 KPL or MIPL.

12 They were the money mules who were caught in
13 the intent to deceive, sending the money overseas, but
14 this is money laundering. It is international money
15 laundering plain and simple, and Yahoo transfer, again,
16 the promise of making \$3,500 a month.

17 And here is the deal for the website. KPL,
18 make money from home. Here is the contact information,
19 how to contact us how to apply. New stories that they
20 created to support the facade of sending money overseas,
21 making it look legitimate.

22 And then, of course, we have Donna Wolfe's
23 application, proof that this money-laundering conspiracy
24 worked, money mules applied. Money mules started working
25 for them. Here are the money mules. You heard testimony

1 how their lives, their bank accounts were interrupted,
2 houses were raided because they were involved in a
3 money-laundering scheme that was so deceitful and so
4 fraudulent that they thought they were working for a
5 legitimate company.

6 And then, when the money got overseas, you
7 heard how Bogdan Antonovici, the money guy, he picked the
8 money up, and he delivered it to Bogdan Nicolescu and
9 Radu Miclaus.

10 Finally, we have an enhancement for
11 domain — false domain registration, and that was a
12 table. You will be able to see it. It was a table
13 prepared by Special Agent Ryan MacFarlane.

14 It was information that Liam O'Murchu
15 testified to about the false domains that they saw
16 registered at various VPN services to a vague detection
17 by filters who were checking for false domain.

18 So you heard from Special Agent MacFarlane
19 how the Bayrob Group was able to create false domain
20 names. They were to register for services, and they did
21 so with their false domain information in a way to evade
22 detection from servers and to be able to post things
23 online, to be able to do a lot of the technical criminal
24 requirements to perpetuate their scheme.

25 Ladies and gentlemen of the jury, I started

1 out saying that you heard from a lot of victims who were
2 tricked. The FBI wasn't tricked.

3 Ladies and gentlemen of the jury, when you
4 go back to deliberate, you will have with you not only
5 all the evidence, not only all the testimony, but you
6 will be armed with your common sense and your knowledge
7 of everyday life.

8 And ladies and gentlemen of the jury, using
9 that knowledge, using that common sense, using it to
10 apply what you see in the evidence and what you heard in
11 the testimony, you won't be tricked either the Government
12 submits.

13 And when you review the evidence, when you
14 review the testimony, when you use common sense, when you
15 are charged by the Judge, the Government asks you to
16 return the only verdicts that the evidence and the
17 testimony supports, which is guilty to Count 1, guilty to
18 Count 2, 3, 4, guilty to Counts 5, 6, and 7, guilty to
19 Counts 8, 9, and 10, 11, and 12, all of the conspiracy to
20 commit wire fraud, all of the wire frauds, guilty to
21 Count 14, conspiracy to commit computer fraud, guilty to
22 conspiracy to commit trademark fraud, guilty to commit
23 the five counts of aggravated identity theft, guilty to
24 commit money-laundering fraud.

25 Ladies and gentlemen of the jury, the

1 Government asks you to return a verdict of guilty to both
2 Bogdan Nicolescu and Radu Miclaus for all the counts and
3 the enhancement.

4 Thank you very much.

5 THE COURT: Folks, we will take our morning
6 recess. This case is not over. So please remember the
7 admonition. Do not form any opinion. Do not talk about
8 the case.

9 All rise for the jury.

10 (Recess had.)

11 THE COURT: Please be seated.

12 On behalf of the Defendant Bogdan Nicolescu,
13 Mr. Michael Goldberg.

14 MR. GOLDBERG: Thank you, your Honor.

15 May it please the Court, counsel, ladies and
16 gentlemen, thank you. I appreciate your dedication in
17 this case as well, and so does Mr. Nicolescu.

18 It looked dicey at the beginning, whether we
19 were going to be able to keep a full jury, and you stuck
20 it out, and you listened to everything.

21 And I know sometimes this evidence was a
22 little bit dry, a little bit boring and complicated, and
23 I appreciate it. I couldn't have more respect for the
24 job that you've done so far.

25 I will tell you the heavy lifting is going

1 to be when you go back into the jury room and start
2 deliberate.

3 Listening, taking notes, that's hard work,
4 too, but you are going to go back there, and the
5 decisions you are going to make are going to affect
6 people's lives.

7 And that is a heavy responsibility, and I
8 know when we questioned all of you in voir dire, we did
9 so with the idea of letting you know what was at stake
10 and what you would eventually have to decide.

11 So with that in mind, I am going to address
12 you now regarding what I think the evidence has shown
13 with regard to Mr. Nicolescu. I am setting the timer on
14 my watch for 30 minutes. I am going to try to stick to
15 that. At least, we know I will get an alarm in 30
16 minutes.

17 I know you have heard enough arguments, and
18 I know you have heard enough voices. It is time for you
19 guys to talk to you each other.

20 I want to start out also by saying that
21 nothing that I am going to say here is meant in any way
22 as an attack on the gentlemen at this table or the FBI.

23 The U.S. Attorney's Office, the Department
24 of Justice, the FBI are incredibly important to
25 maintaining an orderly society, to maintaining a society

1 that addresses crime and addresses violation of law in an
2 orderly fashion. It is part of a democracy.

3 So when I say something that sounds personal
4 about them, I am talking about the case; I am talking
5 about the evidence; I am not talking about these people
6 personally.

7 When we started this case, I told you that
8 the issue is -- and you are going to have to decide with
9 regard to Mr. Nicolescu -- whether there was a
10 conspiracy, wasn't whether people lost money; it wasn't
11 whether Bayrob Trojan actually existed.

12 The issue was: Is Mr. Nicolescu Master
13 Fraud? Is he the person responsible for the Master Fraud
14 e-mails and the doe text, and is he the only one, because
15 if he is not the only one, if he is not responsible for
16 those beyond a reasonable doubt, then your verdict has to
17 be not guilty of everything.

18 So I am not going to talk about the victims,
19 the mules. You know, Ashley Parton and Donna Wolfe, I am
20 not going to try to call them mules. I am trying not to
21 talk about them at all.

22 They are victims, too, and everybody that
23 sent money to eBay, thinking they were going to get a car
24 and didn't get it, they were victims, and the people that
25 had their computers infected, they were victims. I am

1 going to talk about the evidence as it relates to
2 Mr. Nicolescu.

3 The prosecutor's job, the U.S. Attorney's
4 job in this case is to remove each and every reasonable
5 doubt. You come into this jury service and this trial
6 starts with a complete presumption of innocence for
7 Mr. Nicolescu, complete, and what the Government has to
8 do in the course of the trial is to remove any doubt or,
9 at least, reasonable doubt that Mr. Nicolescu is who they
10 say he is.

11 And I submit to you that they did not do
12 that, and that what they did was show a lot of props,
13 show a lot of evidence of conspiracy, which I agree
14 occurred in my opening statement, they spent a week, at
15 least a week proving the conspiracy.

16 And all these computers here — I have got
17 my notes propped on there, these are my props. They
18 showed you all these things, but there was no evidence
19 taken from any of it, except for the phone, and the
20 phones they had some evidence, and we will talk about
21 that. But these computers didn't yield anything.

22 I told you from day one there would be no
23 electronic evidence coming back to Mr. Nicolescu. The
24 only thing that would be even arguably involved with
25 Mr. Nicolescu was the telephones and the Jabber chats,

1 and there is a lot of doubt whether those are really
2 probative of what the Government says they are.

3 Now, Mr. Brown talked about tricks, don't be
4 tricked. I am not going to trick you. If I say
5 something that doesn't agree with your memory of what the
6 evidence is, just go by your memory, go by your notes. I
7 am not trying to trick anybody.

8 I could get things wrong. There is not
9 going to be any tricks, but what I think was a little bit
10 tricky is the Government arguing that everything they put
11 out in this case is proof beyond a reasonable doubt
12 against Mr. Nicolescu.

13 Now, Mr. Miclaus has a completely different
14 case, but Mr. Nicolescu's case requires that he be proven
15 to be Master Fraud beyond a reasonable doubt, and that no
16 one else could possibly reasonably have used that e-mail
17 or been responsible for those chats, and they haven't
18 done that.

19 They started -- the Government started with
20 a promise, really it is the bedrock, it is the foundation
21 that they were going to prove this case, and they have
22 had a long time. They have had a long time in trial.
23 They had a long time leading up to the trial to gather
24 the evidence and to put their case together against
25 Mr. Nicolescu.

1 When they come in and they say you are
2 guilty of a serious offense — and we know how serious
3 this is because we heard it for Mr. Danet what kind of
4 serious repercussions this has. It is a solemn vow to
5 prove the case beyond a reasonable doubt.

6 It is a bedrock foundation. It is part of
7 our system that predates the Constitution. It goes back
8 500 years in English law, and the reason for that is
9 because punishing somebody who hasn't been proven guilty
10 beyond a reasonable doubt, punishing somebody because
11 they know other people, because they are associated with
12 them, because they have same connection, even because
13 maybe they answered technical questions is a horrible
14 thing to do.

15 So that's why they make it so hard. But
16 when you look at all of the white binders, all of the
17 evidence that was brought in here to begin with, all of
18 the testimony about the terabytes and gigabytes and data
19 that was looked at by the various individuals who were
20 going to testify, none of it directly comes back to
21 Mr. Nicolescu.

22 It is a jump of logic, and here is what
23 happened, ladies and gentlemen. In 2007, complaints
24 started coming in. The FBI starts investigating. We
25 heard that from Special Agent Diaz, issues some legal

1 process, and eventually, she meets with Mr. O'Murchu and
2 Mr. Miller from AOL and maybe their own investigation,
3 and they have got a lead.

4 That's basically the main thing is these,
5 are the e-mail addresses and raduspr appears to be the
6 guy using the Minolta 9797 e-mail.

7 From that point, they issue legal process.
8 Legal process was referred to by agent — Special
9 Supervising Agent MacFarlane, and that means subpoenas,
10 which are request for information.

11 That means Title III wiretaps, and we heard
12 about that where they basically collected all the ingoing
13 information into the servers. There was Wi-Fi
14 surveillance, wiretaps of Wi-Fi traffic, which they
15 occurred in Romania.

16 We heard no evidence of that, that that
17 occurred. There was pen registers showing which
18 computers are connected to which computers, and that went
19 on for years.

20 That went on from 2006 until 2013, around
21 the time of the indictment. They gathered all that
22 information. They stopped Mr. Danet at the Miami Airport
23 in May of 2015, downloaded his phone, took his keys, then
24 they went into his house, and they bugged his house.

25 Who knows what else they did, and because he

1 — and because of the M-LAT request that was sent to
2 Romania and came back saying that Danet has an associate
3 that goes by the name of obe, a high school nickname,
4 which by the way is not a flattering nickname as we've
5 heard here and not something somebody would necessarily
6 want to be called, definitely not a term of respect, came
7 back to Mr. Nicolescu, and his connection was that he was
8 an associate of Mr. Danet.

9 Then they get indicted. That's it. There
10 is nothing else at that point. The day they get
11 indicted, they get arrested. In July 2016, they are
12 brought here, they are arraigned December of 2016. Now,
13 we are in the pretrial stages of the case.

14 The case goes on through the pretrial stages
15 all the way to July of 2018 when Mr. Danet starts to
16 cooperate, when he makes his deal, starts cooperating,
17 starts talking.

18 Flash ahead now, starting March 25th, the
19 day we seated this jury, March 25th, 2019, it wasn't
20 until February 2019 that they went to Romania and talked
21 to those four guys that we heard in the last couple of
22 days. Why?

23 Because they know that all the stuff that
24 they subpoenaed and ordered, everything was given to them
25 from AOL and from Symantec, and everything else wasn't

1 enough to nail Mr. Nicolescu. They knew it.

2 Why else would you wait after 12 years of an
3 investigation, two and-a-half years after arrests are
4 made, well over two years after the case started to bring
5 these guys in, to go talk to these guys and bring them
6 in. Because they know they don't have proof beyond a
7 reasonable doubt.

8 So they bring in these people, offer them
9 things that would entice them to come in here and testify
10 the way — that fits their theory of the case, and they
11 are hoping that's going to be enough.

12 So I think that's something that is going to
13 stand out, and I am going to try to limit my comments now
14 to just eight topics, and I am going to try to get within
15 that half an hour.

16 The burden of proof. We are going to talk
17 about that first. We already talked about — we are just
18 going to touch on the fact that there was a conspiracy.
19 Bayrob is real, and I am not going to say it didn't
20 happen, and these people weren't victims.

21 We are going to talk about the digital
22 evidence or the lack of it. We are going to talk about
23 the physical evidence or the lack of it against my
24 client, the Jabber messages, which are important. We
25 will talk about those.

1 We will talk a little bit about the last
2 minute criminals that came in, all getting off basically
3 scott free to walk out of here and who are probably back
4 in Romania by now.

5 We will talk about Tiberiu Danet and why
6 this case — why the evidence against my client is
7 different from Mr. Miclaus' case, and then we are done.
8 Okay?

9 So as I said, the burden of proof is the
10 highest standard in law. If we can put up slide
11 number 1. This is taken right from your jury
12 instruction. It is the highest standard of law, and you
13 have to believe — and you could believe that a fact is
14 probably true or substantially true and still not have
15 proof beyond a reasonable doubt.

16 As I said, this is a standard that has been
17 enshrined in our law for as long as this country has been
18 on the map and in English law and even longer.

19 Look at paragraph 5, and it specifically
20 alludes to proof beyond a reasonable doubt, means proof
21 which is so convincing that you would not hesitate to
22 rely on in making the most important decisions in your
23 own lives. The most important decisions in your own
24 lives.

25 So I was trying to think of a good example

1 of that, and I don't know if any of you saw the movie
2 Free Solo, but it is about a guy climbing up a 3,000 foot
3 shear rock wall without a rope.

4 And in order to prepare for that, he has to
5 do it with a rope a couple times to find out where all
6 the cracks and handles are, and he had people with him
7 that were holding the ropes on him to make sure, if he
8 fell, he didn't die because if you fall, you die.

9 He had to know that those people beyond a
10 reasonable doubt knew what they were doing, that they
11 knew that the holds that they created on the rock face
12 were sound, that the rope pulleys and the pins that held
13 the rope pulleys in place were correct, and the person
14 holding on to that rope had to rely on that beyond a
15 reasonable doubt, because if he didn't have the right
16 people and the right work above him, he was going to die
17 if he fell.

18 And he took some chances in practicing for
19 this climb where he did fall, and he would died had he
20 not had the proper equipment and people above him on the
21 ropes.

22 So that's kind of the position you folks are
23 in. You got to put yourself in that mindset; that if
24 they didn't prove it to the degree that you would rely in
25 the most important of your affairs like the ropes you are

1 climbing on and are properly anchored, then that's not
2 proof beyond a reasonable doubt.

3 Go to the next slide, please. This is a
4 chart that has been used in a lot of cases such as any
5 criminal case and the a visual perspective on proof
6 beyond a reasonable doubt.

7 Okay? There are — we have already told you
8 that proof beyond a reasonable doubt is the highest
9 standard of law, the highest degree of proof that any
10 case requires because of what the results are if somebody
11 is found guilty, and you will notice that there are a
12 number of steps to get to proof beyond a reasonable
13 doubt.

14 MR. BROWN: Objection, your Honor. This
15 chart is not in the jury instructions, and the Government
16 would object to use of a chart that is introducing
17 concepts or ideas different other than the Court's
18 instruction.

19 THE COURT: Overruled. Ladies and
20 gentlemen, this is not evidence; it is argument only. I
21 will be providing you with the correct jury instructions
22 regarding burden of proof, specifically proof beyond a
23 reasonable doubt.

24 MR. GOLDBERG: Thank you, your Honor.

25 So ladies and gentlemen, proof beyond a

1 reasonable doubt is at the top of this chart, and you see
2 that there is a couple of gradations where you can
3 believe that somebody is likely guilty, probably guilty,
4 suspected or even highly likely, but it is still not
5 proof beyond a reasonable doubt.

6 So the question here is not whether or not
7 Mr. Nicolescu is probably guilty or whether he is maybe
8 Master Fraud or one of the guys being Master Fraud; it is
9 proof beyond a reasonable doubt that he is Master Fraud.

10 So I have already talked about that we
11 confirmed — and we are not objecting and not fighting —
12 and you notice I didn't cross examine any of the
13 witnesses that came in and testified about being
14 victimized. There was a conspiracy, there was no doubt
15 about it. So I am going to skip the digital evidence you
16 heard in this case.

17 You heard evidence and testimony from
18 Mr. O'Murchu, from Mr. Miller from AOL, from
19 Special Agent MacFarlane about the vast amounts of data
20 that was gathered, data that could have filled this room
21 with saved information.

22 And what I would suggest to you what's
23 suspect about that, first of all, contrary to what I
24 think I heard Mr. Brown say, there is no evidence trail
25 that comes back to any one of these routers involved in

1 the Bayrob searches. There is none of that.

2 Mr. O'Murchu said that he was able to follow
3 a proxy back to Romania, to Bucharest, to that area, and
4 I think on cross — and you remember his memory on cross
5 was a lot different than his memory on his rehearsed
6 direct.

7 On cross, he doesn't know whether those were
8 first connections or not but definitely nothing coming
9 back to any of the computers or any of the routers that
10 had been submitted as evidence in this case.

11 What did Mr. O'Murchu bring for you? All
12 right. So he brought some wire sharp pages showing how
13 the virus was working on his infected computer. He
14 indicated he could have saved all kinds of stuff.

15 He didn't bring any of the wire sharp
16 recordings showing his computer connecting to any of the
17 domain names that he indicated they connected to, right?
18 That's an important issue in this case.

19 That's the enhancement. Why would he not
20 bring that? Why would we not have that? He didn't bring
21 any digital evidence that goes back to anything further
22 than a router or, I'm sorry, a server in Bucharest.

23 What he did bring us were wire sharp screens
24 showing activity. We have to think he could have brought
25 all of that other stuff back if it existed or if he

1 thought it was important. He didn't bring it.

2 He brought screenshots of code — you can go
3 to the next slide, go to the next one — he brought
4 screenshots of code like the one you see in front of you,
5 and that's Exhibit 1415 that had the insults, the things
6 that were put in the code to insult Mr. O'Murchu or his
7 team at Symantec.

8 This didn't prove anything. It has no
9 impact on the case whatsoever. Why would he bring that
10 and not evidence for doing the job that you are here to
11 do, which is to decide whether this Government proved its
12 case beyond a reasonable doubt against my client. He
13 didn't do that.

14 He brought extraneous material, and another
15 thing he could have brought that he didn't was something
16 to show that the virus was connected to 400,000
17 computers. I know he said that. I know Special Agent
18 MacFarlane said that.

19 Well, you can't just say it if you have
20 proof of it. You have got to bring the proof. At least,
21 you should if you are trying to convince a jury, if you
22 are trying to find someone guilty beyond a reasonable
23 doubt. So the digital evidence in this case in terms of
24 the computers fails.

25 There is nothing connecting Mr. Nicolescu to

1 the name Master Fraud on the digital evidence, which
2 consisted of everything O'Murchu saw, everything
3 Mr. Miller saw from AOL, and everything gathered over the
4 years of legal process.

5 Go to the next slide, please. I will show
6 you a couple of these. Go to the next page.

7 These are in evidence. They are exhibits,
8 Exhibits 1104. These are the search warrants. These are
9 the web hosting, the dream host, web host, first
10 subpoenas for information, then search warrants.

11 Then, we have pen registers, and then, at
12 the bottom Title IIIs, and you see that goes over a
13 couple of years, three years and the next page, next
14 page, this is Exhibit 1836, next page.

15 These subpoenas going to GMX. We subpoenaed
16 information starting in 2014 for all these GMX e-mail
17 accounts that they felt were connected to the Bayrob
18 Group.

19 Next page. They actually placed Title III
20 intercepts on them, and they did get e-mails, but nothing
21 on all of that data establishes Mr. Nicolescu was sending
22 e-mails as Master Fraud or receiving them, nothing. Keep
23 going. Go back.

24 So at the end of the day, the information
25 that we got from the technical experts that gathered all

1 this evidence amounts to nothing. We still go back
2 to the obe screenshots and the Jabber chats with
3 Mr. Danet.

4 Physical evidence. Next subject: We have
5 seen all these computers piled up. We have all the
6 routers and hard drives piled up, and nothing came off of
7 any of these objects that link Mr. Nicolescu to being the
8 person who they have put all their eggs in the basket of
9 proving, which is Master Fraud.

10 I will especially point out the directional
11 antennae. There were a couple of these, maybe one or two
12 of them. There wasn't even one of these in the house
13 where they searched, where Mr. Nicolescu lived. There
14 was not one of these there.

15 The only router that they took out of
16 Mr. Nicolescu's house — the Government will correct me
17 if I am wrong — I believe is 2047 or 2048, standard
18 wireless router that you find in any house.

19 With regard to the phones that he seized,
20 what did they find? Almost nothing. They ceased
21 Mr. Antonovich's phone, and they did a phone dump just
22 like they did with all the phones.

23 But the phone dump for Mr. Antonovich is the
24 only one that is being put into evidence in total, and
25 that has contact. During the testimony he said MF is

1 Master Fraud. I talked to him on WhatsApp. We know from
2 every other witness that testified that WhatsApp wasn't
3 used by the Bayrob Group ever. There was no connection
4 with WhatsApp.

5 So what do you make of that? What do you
6 think with Mr. Antonovich saying what he thought he
7 should say? Was he saying what he thought the Government
8 wanted him to say so that he could go back to Romania and
9 have a nice life? Maybe. Something for you to consider.

10 The phone number that was attached to that
11 contact, we never heard of it again. I don't know, maybe
12 they will get up and say in their next opportunity to
13 speak, the Government will get up and say "oh, we have
14 got that phone number. It connects to Mr. Nicolescu."

15 But don't you think we would have heard
16 that? That phone number doesn't go to anything connected
17 to Mr. Nicolescu. So the phones here, another prop.
18 They don't show anything.

19 We have got up on the screen now
20 Mr. Nicolescu's phone that was seized on the day he was
21 arrested, a screenshot showing two Jabber accounts. Go
22 to the next one. This is what is Exhibit 45. Agent
23 MacFarlane testified that this was the Jabber accounts
24 that were on Mr. Nicolescu's phone.

25 Go back. You will see that Mr. Nicolescu,

1 he is obe @ aro strangled.net.

2 That particular Jabber account doesn't
3 connect to anything in this case, nothing. It is not the
4 account. It is not the server at aro strangled.net that
5 was on Danet's phone. It connects to nothing. Go to the
6 next page, please, next one.

7 This is the screenshot of the Jabber chat
8 that was taken off of Mr. Nicolescu's phone. You will
9 notice this is obe @ aro strangled.net. It is a
10 different name. And we don't have a date. We don't have
11 a time. We don't know who sent it to who.

12 We don't know if it was ever received, and
13 we don't know that Master Fraud is being spoken about in
14 that chat in the third-party. Those are the only
15 connections from any of this physical evidence that was
16 seized, any of the screenshots, any of the computers,
17 right there.

18 Now, the screenshots of obe on Jabber are
19 only as good as the integrity of the Jabber server. Who
20 had the Jabber server? Mr. Danet. Mr. Danet kept it in
21 his house.

22 Mr. Danet indicated he had administrative
23 control over it, meaning he had access to log in
24 credentials, meaning he had access to log in as anybody.
25 He could manipulate the time and the date.

1 He could do anything on that server that he
2 wanted to do, and by the way, that server may have been
3 encrypted, may not have been encrypted, we don't know
4 because no one ever testified to what happened to that
5 server, but we know Mr. Danet testified that he had full
6 access to it.

7 So when the Government tries to say, well,
8 obe proves that it was Mr. Nicolescu, look at the
9 difference here. This is not proof beyond a reasonable
10 doubt that Mr. Nicolescu is obe; this is suspicion.

11 This is what got him indicted. This isn't
12 proof. And to that the fact that the whole system was
13 maintained by the co-Defendant who flipped a year ago,
14 year-and-a-half ago to testify against his friends and
15 never turned over the server or the passwords.

16 So how do we even trust the integrity of the
17 government's exhibits — I think it is 367 which are the
18 Danet text messages, which he said were with
19 Mr. Nicolescu, where he is traveling from Romania to the
20 United States, and he is stopped at the United States
21 border.

22 Now, Mr. Danet is a seasoned traveler. He
23 had to know that he was going to possibly be searched.
24 He had been ripping off Americans by his own admission
25 for ten years, and he is crossing the border. Would

1 there be a benefit for him to have evidence on his phone
2 leading to somebody else? I don't know. But it is
3 something to think about, and it is also something to
4 think about when you know he had access to the server.

5 He also testified you could run two Jabber
6 accounts from one phone, from one device. Oh, and he was
7 traveling with an unnamed other person. Imagine this.
8 Imagine you wanted to make it look like abe was engaging
9 in some kind of conversation.

10 He could absolutely do that. All he had to
11 do was log in under abe's monikers and log in
12 credentials, and it is done. He had the ability to do
13 that, and he comes in and testifies that he didn't do it,
14 of course.

15 But he definitely gave us all the
16 information that we needed to show that he had the
17 ability to do that. We have already talked about
18 Antonovich's WhatsApp testimony, which is not credible,
19 which doesn't lead us anywhere.

20 We know that Mr. Antonovich is a criminal.
21 He was a criminal a long time before any of this
22 happened. He was an international money launderer; did
23 it for long before any of this until the day he was
24 arrested, and the day he was arrested when he gets asked
25 questions about Nicolescu, he sees where the Government

1 is going with this, and he, of course, goes along with it
2 because guess what? He likes it at home. He likes it
3 with his baby. He likes it with his wife.

4 He didn't want to be here, be in the
5 situation that these guys are in, so he tells them what
6 they want to hear.

7 So, you know, to the extent that he
8 testified that he went and got money and brought it to
9 the Bayrob Group, I believe that, but there has got to be
10 some suspicion that Mr. Antonovich has something to gain
11 by what his testimony was both at the time of his arrest
12 and later on when he came and met with the U.S.
13 Attorney's Office and came here and testified.

14 The latecomer witnesses, the four people
15 that we heard the last couple of days, Valetin Danet,
16 Valetin Dima, Marius Matei, and Catalin Dima, now, as I
17 already said, the Government went after these guys at the
18 tail end of this case six weeks before trial to bring
19 them in because they knew they didn't have this case
20 wrapped up.

21 They didn't have proof beyond a reasonable
22 doubt. They bring these guys in, and let's look at what
23 they had to get. The last witness you heard, Catalin,
24 who sat here yesterday, has every skill necessary to do
25 every job in this conspiracy. He has got a wife. He has

1 got a kid. He has got a good job at this point.

2 He has got other friends that are caught up
3 in this. What does he do? He goes to the police
4 station, takes an oath, tells them I don't really know
5 anything about this, and then when he sees the U.S.
6 Attorney's Office, U.S. Attorney's in Romania with the
7 Romanian police along with the FBI, along with a letter
8 that says, hey, you just tell us, you answer our
9 questions the way we want, you to answer them, you don't
10 have to ever worry about this again, non prosecution.
11 Non prosecution.

12 This guy basically admitted to being almost
13 able to do anything in this conspiracy. He admitted
14 having the ability to access the server as did other
15 people. Valetin Danet also, he had the ability to move
16 the server. He had the ability to run the auction scams.

17 He had the ability to talk to the different
18 individuals that were being manipulated, everything. Of
19 course, he is going to say what the Government wants him
20 to say, and the same goes for the other witnesses that
21 came in here.

22 Do you think Valetin Danet had anything to
23 gain for his brother by coming in here and saying, hey,
24 it was Nicolescu. Where was he five years ago or three
25 years ago, two years ago? No, he was nowhere. He was

1 nowhere until February 19th.

2 The Government wants you to rely on them
3 because it doesn't have the digital and physical evidence
4 to convict my client. They want you to rely on the words
5 of people that would go in, give an oath, and it means
6 nothing according to them.

7 This is too important a decision to do that,
8 to listen to these people. All of them had something to
9 gain. They have families, they have lives, they have a
10 nice situation where they live, where they are not in
11 jail

12 Let's look at — so obviously, they would
13 say whatever they thought the Government wanted them to
14 say. And if the Government thought these people were
15 good witnesses, they should have been out talking to them
16 two years ago like they did with Antonovich, not a month
17 before trial.

18 Mr. Danet, he has got obvious reasons to say
19 what he said in Court. He was stopped at the border, had
20 his phone downloaded. He had his house bugged. He had
21 his Wi-Fi intercepted. He waited a year after and then
22 made a deal with the Government and agreed to testify.

23 And don't forget, when I asked him about his
24 deal, they looked — the Government has the ability to
25 argue for the high end of the range, to 12. The

1 Government could say, hey, you don't get the low end, you
2 get 12. So he is here making them happy. You heard what
3 he was looking at.

4 He said, oh, 37 years, but that's just the
5 statutory maximum, and then I showed him the Guidelines,
6 and he agreed with me that he was looking at somewhere
7 around the 144 months, maybe a little more, maybe a
8 little less. You can figure that out what that is.

9 He knows he is not getting more than 12
10 years for his testimony here as long as the U.S.
11 Attorney's Office says it is okay. You can't
12 believe what he says either. Go to the next slide,
13 please.

14 Bogdan Antonovich, no prosecution; Valetin
15 Danet, no prosecution, no prosecution letters — he is
16 not being prosecuted. If they have not been prosecuted
17 now, they are not going to be. Next one.

18 Dima, no prosecution, letter, guaranteed no
19 prosecution if you show up here.

20 Next one. Marius Matei, no prosecution.

21 Next one, Catalin Dima, the guy that
22 admitted to doing almost everything, no prosecution
23 letter, not even no prosecution. You are clear. Just
24 come in here, say what we want you to say.

25 Now, they are going to say tell the truth?

1 Well, it is what they want him to say that my client is
2 Master Fraud. No prosecution for that guy.

3 You can see the asymmetry here how the
4 Government can control these witnesses with that kind of
5 gift, with that kind of — and it is a gift.

6 If these guys aren't telling anything close
7 to the truth, it is a gift. What is it worth to go home
8 to your family and your children and your wife? Can you
9 put a price on that? No. But that's what they got for
10 coming in here. Next slide. All right. So go back.
11 Couple more points.

12 What a witness gets, so go back to the page
13 before the graph. I know I have gone over — I am almost
14 done.

15 Witness consideration: Right in your
16 instructions you are allowed to consider what a witness
17 got for their testimony or why they would be not telling
18 the truth or why they would not be accurate.

19 How good was a witness' memory? Well, we
20 can go back and even look at Mr. O'Murchu on cross. He
21 didn't remember anything. He was very clear that he
22 remembered 400,000 computers infected and 78 domains
23 accessed, but he didn't remember hardly anything on cross
24 examination. Why would that be? You could consider
25 that.

1 You could ask yourself how the witnesses —
2 you could ask yourself how the witnesses acted while
3 testifying? This is the third note down.

4 Did they appear honest? Did they appear to
5 be lying? Okay. And the last one, ask yourself if the
6 witness had any relationship to the Government or the
7 Defendant or anything to gain or loose from the case that
8 may influence a witness' testimony.

9 Ask yourself if the witness had any bias,
10 prejudice, or reason for testifying that may cause a
11 witness to lie or slant the testimony. That's right in
12 your instructions. You have got to consider that, and
13 when you do, you will find that these witnesses that are
14 human, that were brought in by the Government because the
15 digital and the physical evidence doesn't prove anything,
16 all of them were subject to being liars.

17 And all of them had reasons to lie, every
18 single one of them, and most of them did, most of them
19 did provedly or at least came in and said, "well, I took
20 an oath and lied, and now I am telling the truth."

21 How do you convince somebody based on that?
22 You don't. You just don't. And if the Government says
23 you can, well, that's the trick that is being played here
24 okay? There is also — now, you can go forward to after
25 the page with the names — okay?

I am going to point out something, and I am
not here to indict or to suggest that you should convict
Mr. Miclaus, but the case against my client is very
different from Mr. Miclaus.

9 In the hundreds of terabytes of information
10 that have been produced here shows nothing like that for
11 my client, no open public searches that shows anything
12 like the stuff that we have got on Mr. Miclaus in this
13 trial.

14 It is completely different, and you are
15 going to have a jury instruction. You have to consider
16 the two Defendants separately. They are separate cases.
17 You have got to consider them separately. So no matter
18 what happens to Mr. Miclaus, you have got to consider the
19 evidence against Mr. Nicolescu separately.

20 You are going to have special jury
21 instructions regarding testimony of an accomplice. We
22 have heard some of that here in these witnesses that have
23 come in, notably — well, actually all of them. They
24 claim to be accomplices. Next one.

25 || Another instruction about testimony of a

1 witness under a grant of immunity or criminal liability,
2 read these very carefully because you, as jurors, are to
3 view that testimony with more scrutiny, more cynicism.
4 That's not in the instructions, cynicism, more close
5 scrutiny than any other type of witness because of what
6 they have to gain. Next.

7 Separate consideration for multiple counts,
8 another instruction that you are definitely going to
9 have.

10 Finally, you know, we heard a lot about
11 different amounts of money that the Bayrob Group
12 supposedly harvested during the course of this scheme,
13 and I would submit to you that the only person we know
14 has money is Tiberiu Danet because he has got a million
15 dollars in bitcoin somewhere, and he can't remember the
16 pass code for that if you remember that testimony.

17 He can't remember where — he just can't.
18 He remembers the first layer of encryption of his
19 computers but not anything else, where the bitcoin is,
20 can't help him with that.

21 Think about that and what that does for
22 Danet's testimony, but all the other guys that know
23 Danet, that are friends with Danet, his brother whose
24 testimony by the way didn't jive with Danet's in a lot of
25 ways — and I am sure you picked up on that — there is a

1 million dollars in bitcoin somewhere that Mr. Danet has
2 the pass code for, that he agreed to forfeit — that the
3 Government dollars to doughnuts will never see a dime
4 because Mr. Danet is counting on doing his time,
5 getting out and collecting what may be \$2 million by that
6 time.

7 On the other hand, what money have we seen
8 from Mr. Nicolescu? Couple dollars seized at his house
9 when they arrested him. There is some innuendo going to
10 his father or his family or something like that.

11 But that's just — it is innuendo. They
12 spent the money and took time to go to Romania and bring
13 those four criminals back here to point the finger at
14 Nicolescu.

15 They couldn't get Mr. Nicolescu's father's
16 bank records? They got every bank record in America.
17 They couldn't get those bank records? They had M-Lat
18 authority. They could just write a letter to the
19 Romanian police, and they couldn't get those things?

20 Show something. When you are trying to show
21 somebody as being the master controller of a big fraud
22 where there is a lot of money, you show the money. You
23 show where the money went.

24 The only person we know has money is Danet,
25 not Mr. Nicolescu. So the Government promised in their

1 opening statement that they were going to put together a
2 puzzle, and that piece by piece it was all going to fit
3 together, and it was going to lead to no other
4 conclusion. Well, they haven't done that.

5 They brought in a lot of evidence. Maybe
6 they got the outline of the puzzle. They brought in a
7 lot of physical evidence. Nothing relates to anything
8 about Mr. Nicolescu.

9 They tried to fill it in with human
10 witnesses. They tried to fill in their puzzle with human
11 witnesses that are admitted liars, have everything to
12 gain, nothing to lose by coming in here and lying. And
13 they presented that to you as a completed puzzle.

14 I would submit to you that puzzle looks like
15 my son's crossword puzzle. It is about half filled out.
16 There is a lot of room, there is a lot of room and a lot
17 of reasonable doubt.

18 And once you look at these instructions, you
19 consider the evidence that was produced and all the
20 evidence that wasn't produced and all the meaningless
21 stuff that has been trodded out during this trial, I
22 believe the only proper verdict would be one of not
23 guilty as it relates to Bogdan Nicolescu, and I thank you
24 for your attention.

25 THE COURT: Ladies and gentlemen, I am

1 guesstimating about another hour of argument. It is
2 11:30 now. I cannot split up the last two arguments, so
3 if we start them, we are going to complete them, and then
4 we would take a break before jury instructions.

5 Or we can take a luncheon break now, and I
6 anticipate only giving you about 45 minutes for lunch.
7 So I need to have you vote. Is anyone interested in
8 having the lunch now as opposed to in an hour from now?
9 Would anyone like it now?

10 (No response.)

11 THE COURT: No. Okay. If you would like to
12 stand and stretch before the next argument, please feel
13 free to do so.

14 (Pause.)

15 MR. BROWN: Objection to the first slide.
16 That's not for the jury's consideration and should be
17 removed.

18 THE COURT: One moment, side bar.

19 (Side bar held on the record.)

20 MR. O'SHEA: I am just talking about the
21 people who testified in this case, who the Government
22 brought out proof they wanted charged. The Government
23 did that, Judge.

24 MR. BROWN: Your Honor, they can't — they
25 can't show to the jury this case is against uncharged

1 co-conspirators. That's inappropriate and not consistent
2 with the instructions. He should move on from the first
3 page.

4 THE COURT: I don't know what his argument
5 is yet, though. So it is hard to tell just from the page
6 whether or not what he is saying is inappropriate.

7 MR. O'SHEA: Well, turn to page 26, your
8 Honor —

9 THE COURT: Well, I am aware, but I don't
10 know — what is your intent with this?

11 MR. O'SHEA: Just the title page, Judge.
12 Again, the Government put it out there that these guys
13 had non prosecution agreements.

14 THE COURT: Right.

15 MR. O'SHEA: They did that.

16 THE COURT: So you are talking about their
17 non prosecution.

18 MR. O'SHEA: Right.

19 THE COURT: And whether or not they are
20 liars.

21 MR. O'SHEA: Right.

22 THE COURT: Do you intend to go any further
23 than that?

24 MR. O'SHEA: No.

25 (Side bar concluded.)

1 THE COURT: On behalf of the Defendant,
2 Mr. Miclaus, Mr. Michael O'Shea.

3 MR. O'SHEA: Thank you, your Honor.

4 Folks, I apologize in advance, I am going to
5 be jumping back and forth to my laptop here because I am
6 going to be the person advancing these power point slides
7 at the same time making an argument to you.

8 Let me also tell you, folks, last night,
9 late at night I was preparing this presentation for you.
10 It is about 33 slides long.

11 There is bound to be some typos in there
12 because of the time of night I was doing it, and I
13 apologize in advance for that, and I will try to move
14 along as quickly as possible. Let me start out by
15 saying I feel lucky to be here in this courtroom this
16 morning.

I am lucky to be here in the United States
Federal District Court courtroom with outstanding
prosecutors, a dedicated team of FBI agents, a jury —
and I will get to this in a minute in a little bit
more — that was obviously paying attention, poor George
who has to keep up with me when I speak too fast and, of
course, the Judge, who presided over the last two
and-a-half weeks, folks, with absolute expediency,
professionalism, and dignity.

1 And I thank everybody for that in the
2 courtroom and, of course, Mr. Goldberg, who I believe has
3 a harder job than I do, did an outstanding job in
4 assisting his client.

5 There is a reason that the Judge's bench is
6 higher, folks. This dignity of this courtroom, the gold
7 trim we see on the ceilings, these chandeliers, this is
8 not a place that was put together inexpensively. It was
9 done so with a purpose; that outside of this building,
10 the inside of these corridors, and this courtroom look
11 elegant for a reason because we are here for very serious
12 matters, very serious.

13 And here, ladies and gentlemen, we are here
14 in this case, the United States of America versus Radu
15 Miclaus.

Now, as you see, I have read on my first slide allegedly he is Mr. Ten Percent. I think there was some evidence brought out about that. The Government brought that out. I think this case is also against Mr. Nicolescu, and you have heard these other gentlemen who came into this courtroom, who were offered a pass. Regardless of what they did, regardless whether they were 10, 20, 30, 40, 50, 60, 70, 80, 90 percent involved, pass, complete pass.

Now, I want to start out by saying thank

1 you. Thank you, thank you, thank you three times.

2 The volume of technical and confusing
3 exhibits is extremely large. The volume of technical and
4 confusing testimony is large. You stuck it out, and I
5 think you know what I mean by that.

6 There are four empty chairs here. There are
7 12 full chairs here, enough said. Thank you for sticking
8 it out. It wasn't easy. You paid attention. I watched
9 you. I watched you from over there. You paid attention
10 to the case and the evidence.

11 You didn't drift off; you didn't stare out
12 those windows; you stared right at the evidence, and you
13 stared right at the folks on the witness stand. Thank
14 you for that.

15 You fulfilled, as I have here in my slide
16 here, your duty. Thank you for that. My client thanks
17 you for that. I think I speak on behalf of everybody in
18 the courtroom to thank you for that.

19 Now, let me go to the next slide.

20 Contrary to what you heard on opening
21 statement by my colleague, Mr. Brown, no one here for
22 Radu Miclaus is looking to trick you in this courtroom.
23 Not true. False.

24 What I and Mr. Miclaus are looking for you
25 to do is just to follow the oath that you took. I have

1 made a big deal about that during jury selection for a
2 reason. Oaths matter. I am not — I am looking for you
3 to read and to follow the jury instructions. They are
4 long in this case, ladies and gentlemen. They contain a
5 lot of definitions, a lot of words, a lot of detail.

6 I am looking for you to simply review the
7 exhibits. I am looking for you to simply evaluate the
8 testimony. That's it, nothing more and nothing less, no
9 trickery, nothing, just your oaths.

10 Now, let's talk a little bit about jury
11 instructions. It is a big part of what this case is
12 about. The jury instructions are your oath.

13 You took an oath to follow them. You
14 promised to follow jury instructions and only the jury
15 instructions, not your gut, not your suspicions, not your
16 feelings, not your opinions. This is not a debate about
17 the Cleveland Indians, folks, not about your own
18 experiences.

19 Now, I always say when I am doing these
20 types of things that the best jurors technically are
21 these guys like Dr. Spock — or excuse me — Mr. Spock
22 from Star Trek who was a guy who was emotionless, just
23 would analyze objectively what was happening in front of
24 him without any feelings, biases, or prejudices.

25 That's what I am asking you to do to the

1 best of your ability in this case and nothing more.

2 Now, you heard some vague statements as to
3 the Romanian group, and that U.S. citizens were targeted
4 by a Romanian group as if this were same sort of World
5 War III rather than a federal courtroom where it doesn't
6 matter what country it came from.

7 It could have come from Buffalo. It could
8 have come from San Francisco, Paris, France, Romania;
9 doesn't matter. It is not Romania services the
10 United States citizens, it is not; it is just an
11 allegation that a crime occurred, regardless of where it
12 allegedly occurred from.

13 Do not be dissuaded into following your
14 objective oath, to follow the evidence, and not make it
15 about a nationality thing at all.

16 Now, you also heard — and I think Mr.
17 Goldberg touched on this about these crude statements
18 that you saw — for whatever reason, folks, use your head
19 as to why they were presented to you, about statements
20 that were made about Mr. O'Murchu. Remember that?

21 Why do you think that came in? Do you think
22 it was meant to affect this part of your body or that
23 part of your body?

24 Again, ladies and gentlemen, please just
25 read and follow the jury instructions and not a power

1 point presentation, be it from the federal government or
2 Mr. Goldberg or from me, please.

3 Now, the next thing I am going to talk about
4 is exhibits, and then after that, we are going to talk a
5 little bit about testimony. Let's start first about the
6 exhibits.

7 There are exhibits that the Government
8 claims point to Mr. Miclaus. But what we really have —
9 and look at them when they come into the jury room,
10 ladies and gentlemen. There is lots of electronic
11 exhibits with references to Minolta min, raduspr,
12 ferdy.

13 However, no exhibits — and again, trust
14 your recollection of what happened in the last two
15 and-a-half weeks, trust your notes, your collective
16 discussions in the jury deliberation rooms — but no
17 exhibits with the name Radu Miclaus will you see except
18 ones that were created by the Government for this trial
19 and for evidence.

20 And as I indicate in this slide, it is not
21 necessarily just the quantity of evidence — and you will
22 have a lot of documents to look over — it is the quality
23 of that digital evidence as it finger points, as it is
24 same sort of digital fingerprint as it relates to
25 Mr. Miclaus, not ferdy, not Minolta 9797 but Mr. Miclaus.

1 Again, all I am talking about ladies, and
2 gentlemen, is the evidence you heard in this courtroom.
3 Now, what do those exhibits not show? Those exhibits do
4 not show specific ties to Radu Miclaus, specific dates —
5 I think Exhibit 227 was that Jabber chat; has no date on
6 it by the way.

7 Check my math, folks, if I am wrong about
8 that in the deliberation room. There is no specific
9 locations, no specific transactions, no specific losses
10 no specific people, no specific cars, and no specific
11 relation as it relates to Mr. Miclaus to any computer
12 code or computer conduct, no fingers on the keyboard,
13 testimony from anyone in this courtroom in this federal
14 courtroom.

15 What else don't we see? What else is
16 missing? Any hard evidence that Mr. Miclaus was using a
17 computer that was connected to a control server? No
18 content of any messages allegedly sent by Radu Miclaus.

19 You know, in that regard, it is impossible
20 to know how and when allegedly Mr. Miclaus assisted any
21 group. I think, as I said, there was that one Jabber
22 exhibit that had no date whatsoever and no real meaning
23 or content to it.

24 So — and there is also, as I think
25 Mr. Goldberg pointed out, there is no slow running

1 computers here like these other computers with this
2 alleged malware. So I use the word malware. Where are
3 these computers?

4 They brought people from all over the world
5 into this courtroom, and yet, not a single infected
6 computer, none. Where is the alleged stolen credit card
7 information or proof that this credit card information
8 was ever displayed to use specific items or specific
9 domain names.

10 And again, you are going to hear this word
11 out of my mouth a number of times called "specificity."
12 Specificity, as it relates to the specific conduct to a
13 fellow by the name of Radu Miclaus, and I am only
14 referring my comments to what you heard in this
15 courtroom.

16 Did any witness specifically claim that
17 there was specific credit cards stolen by Radu Miclaus
18 that was used to buy specific items. The answer, of
19 course, is no. That's as it relates to the exhibits.

20 Now, let's talk about the witnesses.
21 Mr. Goldberg already talked about the six fellows.
22 Mr. Brown did a nice job at posting all six of their
23 pictures for you, presumably in the order in which they
24 testified.

25 The only human beings who came into this

1 courtroom, who sat in that witness chair and said
2 anything about specifically Radu Miclaus were those six
3 folks.

4 And I am going to ask you to consider their
5 testimony. None of them were anything like the ten
6 percent. Every single one of them was 25 percent or
7 north of 25 percent. They were Mr. Danet,
8 Mr. Antonovich, the other Mr. Danet, Dima number 1, Matei
9 and Dima No. 2, those six people.

Now, Mr. Goldberg already analyzed those six people, and let me suggest that when it comes to their recollection and their ability to be specific, they had what you would call credibility fleas. You would believe their recollection and what they said like you would instruments truck stop sushi, ladies and gentlemen. Think about it. Think of that analogy.

17 In the jury instructions that you will be
18 given, as Mr. Goldberg pointed out already, accomplice
19 testimony is given with more caution. Immunity grant
20 testimony is to be given more caution than the average
21 witness.

22 Let's talk about these guys, the six guys.
23 You will be given jury instructions on how to analyze
24 them and the burden of proof and beyond a reasonable
25 doubt.

1 In that context, would you trust any one or
2 all of those six folks to invest your money, your own
3 personal money? Think about that.

4 Would you take any advice from them when it
5 comes to an important medical procedure?

6 Would you want to be — want them to be
7 friends with your children or your siblings?

8 How about this: Would you expect them to
9 turn in a wallet they found on the street, or do you
10 expect them to ever make any attempt whatsoever to return
11 any of the money they claim they stole from people?

12 Do you expect them to ever call the Romanian
13 officials to say, "hey, by the way, just got done
14 testifying in a federal courtroom in the United States of
15 America, Cleveland, Ohio, early part of April 2019. I
16 want to tell you about the money, and I want to pay taxes
17 on it."

18 Do you think that's ever going to happen?

19 And by the way, did you hear any of them
20 testify that they are sorry for what they did? What you
21 heard is that they feel sorry for themselves. One
22 witness even broke down and started crying because he
23 felt so sorry for himself.

24 I think we saw some pictures, ladies and
25 gentlemen, of cars. I think these are all exhibits that

1 we see here, Exhibits 1170, 1177, 1180, and 1432.

2 Ask yourself a question after listening to
3 those six folks. Would you buy any of these cars from
4 any of these Romanian witnesses, even if they drove it to
5 your house, opened the hood, showed you the title, and
6 let you test drive it?

7 Would you buy the car based upon their
8 testimony in this federal courtroom?

9 Again, these witnesses, ladies and
10 gentlemen, are not ten percent witnesses; they are
11 way beyond that, and as Mr. Goldberg pointed out,
12 they are eleventh hour witnesses, February of 2019
13 witnesses.

14 Again, I did this late at night, ladies and
15 gentlemen, and I apologize for any typos. But even if
16 these were Nobel Peace Prize winners, what did these
17 witnesses not say?

18 Specific ties to Radu Miclaus? No.

19 Specific dates? No.

20 Specific locations? No.

21 Specific transactions? No.

22 Specific losses? No.

23 Specific people? No.

24 Specific cars? No.

25 Specific relation to any computer code,

1 namely this Bayrob virus? No.

2 Or computer conduct, cryptomining? No.

3 Now, I did this slide, folks, that is coming
4 up while the Government gave its opening statement.
5 Constant use of the phrase "they, they," again and again
6 and again.

7 I expect in their opening statement they are
8 going to use that word again in their rebuttal, they,
9 they, they.

10 As I sit here, folks, just because the
11 Government uses the term "they" in all their closing
12 comments does not meet the specificity required in the
13 jury instructions, and we are going to get to that in a
14 second.

15 But every time you heard the word "they" and
16 every time you hear it again or any word similar to
17 "they" without specifically identifying specific conduct,
18 think of a bell going off, a bell that rings for every
19 single time or every single fear the Government has as
20 relates to the specificity issue. "They."

21 You are going to hear a lot about the term,
22 and you will hear the definition of it, too, conspiracy.
23 Conspiracy, conspiracy, conspiracy.

24 As I say, it is short for having nothing
25 specific as it relates to Radu Miclaus. It is not

1 conspiracy, ladies and gentlemen, a parachute for a lack
2 of proof.

3 Again, as I say, this slide, look at the
4 word of the jury instructions as your guide, not my power
5 point presentation, not my presentation here, not the
6 Government's power point presentation, and not
7 Mr. Goldberg's power point presentation, but look at the
8 jury instructions.

9 Now, let's talk about the jury
10 instructions for a moment. Let's go right to page 12 of
11 the jury instructions, ladies and gentlemen, where we
12 talk about multiple Defendants. We have Bogdan
13 Nicolescu, Mr. Twenty Five Percent versus Radu Miclaus,
14 Mr. Ten Percent. It says when talking about multiple
15 Defendants charged with the same crimes, the Defendants
16 have been charged with several crimes of a number of
17 charges — and I emphasize this, and that's what I am
18 doing here, find it, it is in the jury instructions on
19 page 12 — is no evidence of guilt.

20 And this should not influence your decision
21 in any way. And in our system of justice, guilt or
22 innocence is personal and individual. Again, going back
23 to the theme of oath and specificity, it is your duty to
24 separately consider the evidence against each Defendant
25 on each charge and return a separate verdict for each of

1 them.

2 Those words are chosen even for your jury
3 selections for a reason, and that reason is to get rid of
4 this notion that it is simply they, they this, and they
5 that. Read the jury instructions, the jury instructions
6 that you took an oath to follow.

7 Again, it goes on for each one you must
8 decide whether the Government has presented — they are
9 the Government — has presented proof beyond a reasonable
10 doubt that a particular Defendant is guilty of a
11 particular charge.

12 And then, it goes on to say your decision on
13 any one Defendant or charge, whether it is guilty or not
14 guilty, should not influence your decision on another
15 Defendant or charges.

16 Now, you heard a lot, with all due respect
17 to my colleague here, Mr. Goldberg, about obe,
18 Mr. Nicolescu, a lot, a lot of what he did.

19 This jury instruction allows you to compare
20 to what he did to what allegedly Mr. Miclaus did and
21 separately, specifically break it down because the
22 decision you make as to each Defendant is both personal
23 and individual.

24 And you must separately consider each count
25 as they relate to each Defendant's separate specifically

1 identified conduct.

2 I am going to talk about Counts 1 through
3 13, which are the wire fraud counts, ladies and
4 gentlemen. Again, referencing the jury instructions, not
5 my discussion or paraphrasing of what the jury
6 instructions say, you heard the Government do a little
7 bit of that, and of course, the Court cautions us all to
8 read the jury instructions, and use those as your guide,
9 not what we paraphrase and infer what the instructions
10 say.

11 Here is what they say. Again, Counts 1
12 through 13, jury instructions, page 19. I have got the
13 page referenced for you, ladies and gentlemen. The
14 Government has to prove that each Defendant knowingly
15 participated and intended to devise a scheme to
16 defraud.

17 Then secondly, if we go down, the scheme
18 included a material misrepresentation or concealment of
19 material fact. What misrepresentation have you been
20 presented with? What?

21 What person came in here and said some
22 statement was misrepresented to me?

23 Sec -- third, I'm sorry. Each Defendant,
24 each Defendant, each Defendant had an intent to defraud,
25 and fourth, each Defendant used wire communications or

1 caused another to use wire communications in interstate
2 and foreign commerce in furtherance of the scheme, again
3 breaking down the specifics and the individuality as to
4 each specific Defendant.

5 Here is a breakdown of Counts 2 through 13,
6 and I am going to ask you something. You look at Counts
7 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, and 13, they are all — I
8 think the allegation the Government has, it is all this
9 eBay scam.

10 It is all based upon a certain code section.
11 Again, these will be in the jury instructions; that it
12 has a specific date. It has a specific person by
13 initial, a specific city. Again, these — this I take
14 directly from the indictment, a copy of which you will
15 have in the jury deliberation room, and they have
16 specific amounts. Jump to the top. Where are the
17 people? Where is the proof of the amounts, folks? Where
18 are they?

19 It is not — and I will probably say this
20 again — Mr. Goldberg's or my job to point out where the
21 evidence is or is not. The entire burden, the entire
22 burden is with the Government, the entire burden.

23 Now, move on to Count 14, which is the
24 computer fraud count. I think it talks about access to
25 computers and damage to computers, and then, it goes on

1 talking about specific uses of PayPal, gmail, Yahoo,
2 Wal-Mart as you see there, but again, nothing specific
3 from the evidence in this courtroom or the witness stand
4 in this courtroom, nothing specific about Mr. Miclaus as
5 to any of those items. We go down to here, and we have
6 specific computers. No.

7 We have — I think if you see in the
8 indictment on Count 14, you have 27 victim initials who
9 were purportedly infected with this Bayrob Trojan, but
10 again, no specific ties to Radu Miclaus. None of those
11 people specifically tie Mr. Miclaus into anything
12 involved with that.

13 Then, I think it is about 48 victims'
14 initials involving what the Government alleges is
15 cryptomining; again no ties to Radu Miclaus.

16 Now, Count 14, as the jury instructions will
17 tell you, is a little different than some of the other
18 counts. It requires proof of what they call an overt
19 act. An overt act will be defined for you in the jury
20 instructions, but pay attention, when you hear that
21 definition because it differentiates Count 14 from some
22 of the other counts, ladies and gentlemen.

23 Now, let's talk about Count 15, the
24 trademark count.

25 Again, this is — the allegation is that

1 somebody is using trademarks owned privately by a
2 company, and it is apparently illegal to take a Yahoo or
3 Google trademark, be careful about political flyers and,
4 you know, high school rally flyers, using the wrong logo
5 on any of the signs.

6 But apparently, it is illegal to use these
7 if you look on Count 15. I believe there are seven
8 referenced victims, but the indictment says there might
9 be 40,000. But again, think about whether there is any
10 specific link whatsoever to Radu Miclaus.

11 Western Union, Radu Miclaus, nothing
12 specific.

13 Norton antivirus, Radu Miclaus, nothing
14 specific.

15 EBay, Radu Miclaus, nothing specific.

16 Facebook, Radu Miclaus, nothing specific.

17 PayPal, Radu Miclaus, nothing specific.

18 Gmail, same thing.

19 Google, same thing.

20 Yahoo, same thing.

21 Wal-Mart, same thing.

22 Radu Miclaus, nothing specific.

23 Specific computers, no, nothing.

24 Let me move on to Counts 16 through 20,
25 ladies and gentlemen.

1 Now, the indictment, again, which you will
2 have, says there were 500 victims, but only five are
3 specifically mentioned, and I think if you look in the
4 indictment, ladies and gentlemen, the dates involved —
5 and you correct me if I am wrong — but look at the
6 indictment that you will have in the jury room with you,
7 February 25th, 2013 to 7-1-2015, where are these people?

8 What proof is there of Radu Miclaus doing
9 anything specific here, and I reference Counts 16, 17,
10 18, 19 and 20. Again, they reference the same statute,
11 they reference specific dates.

12 For instance, Count 16, 2-25-13 to 5-27-13,
13 involving somebody with initials at Fort Recovery, Ohio;

14 Count 17, same thing, specific dates,
15 3-12-13 to 6-16-13 from somebody TM, Celina, Ohio;

16 Same thing on Count 18, specific time frame;

17 Count 19, specific time frame;

18 Count 20, specific time frame.

19 Now, I assume that when the Government gets
20 up to argue again, that they will be making reference to
21 — and it is actually mentioned in the jury instructions,
22 which I ask you to follow — that it is okay if we do on
23 or about. Okay?

24 But on or about does not suffice for no
25 proof of any specific date at all or any specific time

1 frame. Again, the proof that you are to consider comes
2 from the exhibits and the testimony, not argument, not
3 power point presentations.

4 Let's move on.

5 Money-laundering, Count 21. Essentially,
6 the use of this mule stuff — and again, I am referencing
7 the indictment that you will have with you, it references
8 12 e-mail acts I think between 3-13 of '13 to 8-1 of '13.

9 I don't believe I heard any evidence that
10 any mules ever met or know Radu Miclaus. I didn't see
11 from the evidence any links whatsoever between any
12 specific money mule and Radu Miclaus; no specific dates
13 related to Radu Miclaus, and no specific losses related
14 to Radu Miclaus.

15 Again, that's just the evidence that
16 happened in this courtroom.

17 Again, let's move on to this thing that they
18 call an enhancement, the false domain enhancement.

19 I call it Count 23, but it is not Count 23.
20 It is just an enhancement. There was no evidence or
21 testimony whatsoever that Radu Miclaus had any specific
22 involvement with this, none.

23 All the allegations and facts are against
24 Mr. Nicolescu with all due respect to my fellow lawyer,
25 Mr. Goldberg. There is also reference in the indictment

1 about 76 false domain names.

2 There is a time period 4-14-14 to 7-25-14,
3 again nothing specifically proof wise related to
4 Radu Miclaus, nothing. Again, all acts and allegations
5 of facts are against Mr. Nicolescu.

6 There is also in the indictment 16 domain
7 names allegedly used related to money laundering. Again,
8 the time period the Government shows in their indictment
9 5-23-08 to 3-15-13, again, as it relates to the proof
10 that came in this courtroom, nothing specifically related
11 to Radu Miclaus, nothing, zero.

12 All the allegations and facts as they relate
13 to the false domain enhancement by my assessment of what
14 came into this courtroom relate to Mr. Nicolescu.

15 Now, let me move on. Specificity and
16 ambiguity.

17 I talked a little bit about this already,
18 but I am going to emphasize it again. It is not a
19 Defendant's job or burden to find or present or identify
20 specifics. It is not. It is not a Defendant's job or
21 burden to explain or undo any ambiguity you have.

22 It is the Government's. The entire burden
23 on everything — and I emphasize that word — everything,
24 rests with the federal government.

25 Now, I anticipate, like I said before, when

1 it relates to this "they" business, that the Government
2 is going to get up and argue, "but Mr. O'Shea, this is a
3 conspiracy, a group of individuals who you are in for a
4 penny; you are in for a pound."

5 That's a constant argument, or even if you
6 are in for ten percent, I anticipate you are in for a
7 hundred percent, Mr. Miclaus.

8 Again, we are not conceding that there was
9 even ten percent for purposes of the proof that came in
10 here, but that's going to be the argument; that the
11 conspiracy saves us because we don't have any
12 specificity.

13 Well, let's talk about for a second some
14 of the definitions that you are going to see as they
15 relate to conspiracy, definitions in the jury
16 instructions that you are bound by the oath to follow.

17 This one is a little deep, folks, and I
18 apologize in advance.

19 On page 24 of the jury instructions, you are
20 going to hear, as relates to conspiracy, I am going to
21 ask you during the time that the Judge reads it to you
22 from the bench, as well as when you get into the
23 deliberation room, to concentrate on this definition.

24 By the way, contrary to what might be
25 argued, folks, all of the jury instructions carry the

1 same weight. I am emphasizing the stuff that I think is
2 important for purposes of your evaluation.

3 The Government may also point out certain
4 parts of the jury instructions that are important for
5 their evaluation, but they all carry equal weight. They
6 are equal.

7 There is nothing you are going to hear that
8 one jury instruction is more important or carries more
9 weight or authority than another. They are all to be
10 read, all sentences to be read with the same amount of
11 strength.

12 Now, what do they say on page 24 of the jury
13 instructions?

14 As relates to the conspiracy definition,
15 this does not require proof of any formal agreement. I
16 assume the Government will talk about that a lot.
17 Written or spoken, nor does this require proof that
18 everyone involved agreed on all the details. But here is
19 the stuff that I am going to emphasize to you.

20 Proof that people simply met together from
21 time to time and talked about common interests or engaged
22 in similar conduct is not enough to establish a criminal
23 agreement. These are things that you may consider in
24 deciding whether the Government has proved an agreement.
25 But without more, they are not enough.

1 Page 25 of the jury instructions, but proof
2 that a Defendant simply knew about a conspiracy or was
3 present at times or associated with members of the group
4 is not enough. I underlined that. Even if he approved
5 of what was happening or did not object to it.

6 Similarly, just because a Defendant may have
7 done something that happened to help the conspiracy does
8 not necessarily make him a conspirator. These are all
9 things that you may consider in deciding whether or not
10 the Defendant has joined a conspiracy, but without more,
11 they are not enough.

12 Then, the jury instruction follows up right
13 away with an important thing. Perhaps this is the most
14 important thing when it comes to this slide. It is up to
15 the Government, then, to convince you that such facts and
16 circumstances existed in this particular case with that
17 particular Defendant.

18 Let me move on, give you some other sections
19 of the conspiracy definition. These are more text that
20 we will get on the jury instructions as they relate to
21 conspiracy.

22 You will hear on page 28 and 29 when the
23 Court is listing aspects of the definition of conspiracy.

24 And fourth, the Government has to prove that
25 this crime was within the reasonable foreseeable scope of

1 the unlawful project. The crime must have been one that
2 the Defendant, not this Defendant, Mr. Miclaus, not all
3 the Defendants — they use the word "the" — the
4 Defendant could have reasonably anticipated as a
5 necessary or natural consequence of the agreement.

6 The other item, this does not require proof
7 that each Defendant specifically agreed or knew that the
8 crime would be committed. Now, here is the stuff that I
9 am going to emphasize, and I am going to ask you to
10 listen at the time that the Judge gives you the
11 definition and to read it in the jury deliberation
12 room.

13 But the Government must prove that the crime
14 was within the reasonable contemplation of the persons,
15 Mr. Miclaus, who allegedly participated in the
16 conspiracy. No Defendant is responsible for other — the
17 acts of others that go beyond the fair scope of the
18 agreement as the Defendant understood it.

19 Again, these are the jury instructions.
20 These are the rules you must follow. I am almost done,
21 folks.

22 The definition of reasonable doubt. Of
23 course, I am going to talk about this. Of course, I am
24 going to point out certain portions of it. We hear this
25 term "reasonable doubt" all the time in movies and TV and

1 in the press, and now news stations have became somehow
2 as sort of news organizations, they are like
3 opinion-based, and they are always talking about
4 reasonable doubt, this, and that.

5 Here is the definition, contrary to what you
6 may think it might have been before you entered into this
7 courtroom and took your oath of what you will use in
8 order to apply it to the facts as you heard them here in
9 this courtroom.

10 And I think Mr. Goldberg already talked
11 about this. Proof beyond a reasonable doubt means proof
12 which is so convincing that you would not hesitate to
13 rely — and I emphasize the word "and." Do you see
14 that? — rely and act because sometimes you rely on
15 something, and you don't act on something.

16 Sometimes you act on something and that you
17 are not relying, but that definition tells you to do
18 both, rely and act upon it in making the most important
19 decisions of your own lives, not the important decisions,
20 the most important decisions and not in other people's
21 lives; in your own lives. Think about that.

22 Again, it goes on to say if you are
23 convinced that the Defendant has proved the Defendant
24 guilty beyond a reasonable doubt, say so by returning a
25 guilty verdict. If you are not convinced, say so by

1 returning a not guilty verdict.

2 Those two sentences come right after that
3 other sentence, which talks about most important of your
4 own affairs, rely and act. Both are equally valuable;
5 have equal strength.

6 If you could prove — if the Government
7 through all of their work, proved the case beyond a
8 reasonable doubt, yes, guilty verdict. If they have not,
9 not guilty. They are equal.

10 Just because that one sentence comes before
11 the other does not make it more likely, well, you
12 probably should lean towards guilty? No.

13 Let me go back to the jury instructions.
14 Credibility of witnesses, pages 7 to 8 of the jury
15 instructions.

16 This is what the jury instructions say.
17 Another part of your job as jurors is to decide how
18 credible or believable each witness was. This is your
19 job, not mine. It is up to you to decide if a witness'
20 testimony was believable and how much weight think it
21 deserves.

22 You are free to believe everything that a
23 witness said or only part of it or none of it if at all,
24 but you should act reasonably and carefully in making
25 these decisions.

1 The other part of the credibility on pages
2 7 and 8 of the jury instructions — I break them down
3 separately — ask yourself if the witness was able to
4 clearly see or hear events. Think about these witnesses
5 that did testify and what they were actually able to say
6 and what they knew on cross examination.

7 Sometimes an honest witness may not have
8 been able to see or hear what was actually happening and
9 may make a mistake. Ask yourself how good a witness'
10 memory seemed to be. Did the witness seem to accurately
11 remember what happened?

12 Ask yourself if there is anything else that
13 maybe interfered with the witness' ability to perceive or
14 remember events. Again, that's in the jury instructions
15 on pages 7 and 8.

16 Again, on page 7 and 8 of the jury
17 instructions, ask yourself how a witness acted while
18 testifying. Did the witness appear honest, or did the
19 witness appear to be lying? Ask yourself if the witness
20 had any relationship to the government, and I emphasize
21 that because, obviously, that has been gone over quite a
22 bit. Or the Defendant has anything to gain or lose from
23 the case that might influence the witness' testimony.

24 Ask yourself if the witness had any bias or
25 prejudice or reason for testifying that might cause the

1 witness to lie or to slant the testimony in favor of one
2 side or another.

3 There are two things there. "or lie or
4 slant the testimony." Both you can use equally and at
5 your discretion based upon what you heard.

6 When it comes to that credibility factor in
7 the jury instructions on pages 7 and 8 of the jury
8 instructions you also get to ask -- you also will see
9 this.

10 Ask yourself if the witness testified
11 inconsistently while on the witness stand or if the
12 witness said or did something or failed to say or do
13 something at any other time that is inconsistent with
14 what the witness said while testifying.

15 If you believe the witness was inconsistent
16 — and I think we all agree that the witness, at least
17 some of these witnesses, talked about inconsistent
18 statements they had made — ask yourself if this makes
19 the witness' testimony less believable. Sometimes it
20 may; other times it may not.

21 Consider whether the inconsistency was about
22 something important or about some unimportant detail.
23 Ask yourself if it seemed like an innocent mistake or if
24 it seemed deliberate.

25 Again, thank you, thank you, thank you.

1 The length of this case, as I said at the
2 beginning, has been huge. The volume of technical and
3 confusing exhibits is large. The volume of technical and
4 confusing testimony is large.

5 You stuck it out. You paid attention, and
6 as I said at the beginning, you fulfilled your duty.

7 Now, I add this one last line: Now you
8 fulfill your oath. Now, what is the oath? Please follow
9 the oath, ladies and gentlemen.

10 Read the jury instructions, review the
11 exhibits, analyze and scrutinize the testimony.

12 Based upon what occurred in this courtroom
13 over the last two and-a-half weeks with the evidence that
14 you have, it is clear, unambiguously clear that the
15 Government has failed to prove their case beyond a
16 reasonable doubt.

17 It is not easy for you to go into that jury
18 deliberation room and fulfill the oath that you took.
19 Oaths are done by raising your hand. They are not easy
20 to do, and because they are not easy to do — because
21 they are not assumed, that's why they make you take an
22 oath.

23 That's why they make you raise your hand and
24 swear that you are going to do it, regardless of what
25 your personal biases might be, whatever potential

1 prejudices you might have, whatever brief dispositions
2 you might have, some thoughts, experiences, opinions,
3 regardless of all that, you take an oath for a reason,
4 and that is to put all that aside.

5 And like Mr. Spock from Star Trek, you
6 fulfill your oath to objectively analyze the evidence
7 that you heard in this courtroom and apply it to the
8 Counts in the indictment and to utilize these jury
9 instructions to get there.

10 You can't simply, because they use the word
11 "they" or because they have the word conspiracy run from
12 first to third and shoot home. That's what the
13 Government wants you to do here. They want you to avoid
14 second base, to simply ignore the rules of baseball
15 because a win is important, but you can't. Make the
16 Government round all the bases. Make them follow the
17 rules.

18 Hold them to the burden that is created for
19 them by definition. Make them prove to you that the jury
20 instructions that you will be given apply to the exhibits
21 and the testimony in this case.

22 Ladies and gentlemen, thank you, and on
23 behalf of my client Mr. Miclaus, thank you. It has not
24 been easy. It has not been short. You could have quit.
25 You didn't. That's unbelievably powerful to us. Thank

1 you for fulfilling your oath.

2 Thank you very much.

3 THE COURT: Ladies and gentlemen please feel
4 free to stand and stretch before the next argument, the
5 last argument.

6 THE COURT: On behalf of the Government,
7 rebuttal argument, Mr. Duncan Brown.

8 MR. BROWN: Thank you, your Honor. Thank
9 you, ladies and gentlemen of the jury.

10 Before the Government presents the meat of
11 its closing argument the Government wants to point out
12 that it has never tried to shift its burden. It has
13 always accepted that the burden, which is to prove the
14 case as alleged in the indictment.

15 That's why the Government has presented the
16 witnesses that it did. That's why the Government
17 presented the evidence that it did. It did not think it
18 is playing a baseball game.

19 The Government does not see your job as
20 anything other than the most important duty you can serve
21 in this country. It is not a baseball game. We are not
22 asking you to cheat at a game. We are asking you to do
23 your duty.

24 We are asking you to do your job, and that's
25 why, when we talked to you, we presented you with not

1 only charges but the evidence and the testimony
2 supporting those charges so you can do your duty. You
3 are not just being read the jury instructions. You are
4 looking at the evidence. You are looking at the
5 testimony, and you are looking at how it fits into the
6 charges.

7 And make no mistake, when the Bayrob Group
8 is mentioned, it is because it is conspiracy liability.
9 We are not — we are not using conspiracy liability.

10 The Government is not using conspiracy
11 liability to hide from any burden. The Government is
12 using and is charging conspiracy liability to show the
13 full effect of the crimes of Bogdan Nicolescu and the
14 crimes of Radu Miclaus against the victims in the
15 United States who were robbed of money, who had their
16 computers infected, and who lost confidence in their
17 ability to go online and communicate with people.

18 This is not a game; this is not a joke, and
19 the Government has never used anything to shy away from
20 its burden, to shy away from its duty because the gravity
21 of the crimes committed by Bogdan Nicolescu, the gravity
22 of crimes committed by Radu Miclaus are that severe, that
23 serious.

24 For the last hour, hour-and-a-half, you have
25 heard all about the six Bayrob co-conspirators, Bayrob

1 witnesses, whatever you want to call them.

2 They are not the Government's friends. We
3 didn't bring them into the Bayrob Group. Bogdan
4 Nicolescu brought them into the Bayrob Group.
5 Radu Miclaus brought them into the Bayrob Group.

6 They are not our friends. They are their
7 friends. Bogdan Nicolescu recruited them. Bogdan
8 Nicolescu gave them jobs. Radu Miclaus split money with
9 them. Radu Miclaus worked with them to deploy and
10 exploit the Bayrob Trojan.

11 You heard about prosecution letters and
12 non prosecution deals. Those six witnesses did not get
13 the deals they got or did not come here regardless of
14 what they did.

15 They are here because of what they did
16 because they were members of the Bayrob Group, because
17 they were members of the conspiracy along with Bogdan
18 Nicolescu, along with Radu Miclaus.

19 They are here because they can provide to
20 you, the jury, an inside view of a conspiracy. They
21 can provide an inside view of what happened in this
22 crime.

23 And you heard testimony from them. They
24 worked with Nicolescu. They were recruited by him.
25 Nicolescu configured their computers, he configured

1 encrypted hard drivers, he taught Bogdan Antonovici the
2 encryption for the Jabber chat.

3 And what they said was consistent, certainly
4 consistent with being criminals, consistent with being
5 criminals involved in a sophisticated criminal scheme.
6 And that scheme was created by Nicolescu.

7 We call it the Bayrob Trojan. Liam O'Murchu
8 called it the Bayrob Trojan, but you heard from his
9 friends, you heard it was called MyBay. It was called
10 MyeBay. That's what Nicolescu called the Trojan,
11 MyeBay.

12 The Government submits to you he called it
13 MyeBay because that's what it did, it took eBay, and it
14 made it his. It made it his MyeBay. He didn't call it
15 amightysa's eBay. He didn't call it Danet's brother's
16 eBay. He didn't call it Dave's eBay; he called it
17 MyeBay.

18 Deception, trickery, misdirection. This is
19 what Miclaus and what Miclaus trafficked in. This is
20 what they counted on to commit their criminal enterprise.
21 But that is not what the Government presented to you.
22 That is not what the Government submits the evidence and
23 the testimony showed.

24 The Government never asked you here, as Mr.
25 Goldberg did, to imagine what's on a hard drive. The

1 Government presented testimony that when those hard
2 drives were seized, they were LUKS encrypted. They can't
3 be broken into.

4 We didn't say but just imagine the wealth of
5 criminal activity that could be on there. The Government
6 did not just provide you with jury instructions and
7 that's it and say listen, we provided the -- the
8 Government argues here today the evidence that came in
9 today, the testimony that came in over the last two weeks
10 and how it fit within each of the charges were presented
11 to you.

12 But what hasn't been mentioned the
13 Government submits, what hasn't been mentioned enough
14 because we talked a lot about the Romanian witnesses, we
15 talked a lot about human witnesses, there is one other
16 witness the Government submits, there is one other source
17 of information that has been alluded to that has been
18 criticized for being too big, for being too wordy, for
19 being too complex, but there is one other -- there is one
20 other source witness that has been talked about, that has
21 been analyzed and has always been part of the testimony
22 from Liam O'Murchu's testimony, to Ryan MacFarlane
23 testimony, to both Danet brothers' testimony, both Dima
24 brothers' testimony, Matei's testimony and Antonovici's
25 testimony, and what is that?

1 It is the command and control server. Don't
2 be tricked by the phrase practical infinite amount of
3 data, practical amount of data. Don't be tricked by
4 that.

5 The data on the command and control server,
6 which was subject to search warrant, which was the
7 subject of T-IIIIs, it is all the data that was collected
8 by the Bayrob Group. It was data organized by the Bayrob
9 Group, all the members of the Bayrob Group.

10 All that data was analyzed, compiled, used,
11 maintained by the Bayrob Group.

12 The Bayrob Group used the Bayrob Trojan
13 created by Bogdan Nicolescu, deployed by Radu Miclaus
14 over hundreds and thousands of eBay auction frauds. It
15 was deployed to go collect the information, to go bring
16 back information, to compile data, to amass data.

17 And then the Bayrob Group, Nicolescu, Danet,
18 the other Danet, Dima, the group helped analyze it,
19 helped use it so people like Miclaus could exploit it, so
20 other members could exploit it.

21 There is nothing scary, nothing wrong about
22 a conspiracy because it reflects each role that a member
23 plays within that conspiracy.

24 The infinite data that is being discussed in
25 this case is of the Bayrob Group's own creation. What

1 didn't you hear? You didn't hear that Special Agent
2 MacFarlane went out to eBay and pulled off of eBay
3 thousands and thousands of auction listings. He didn't
4 have to.

5 It was all in the command and control
6 server, and you will have — where is it? — Government's
7 Exhibit 1126. This is the directory tree from one of the
8 command and control servers.

9 It is a file listing of all the files in the
10 command and control server, and you can see — you can
11 see drone files; you can see cars being listed there.
12 You can see all sorts of files that relate to the
13 operation and the maintenance of the Bayrob Trojan and
14 the operation and the maintenance of the scheme carried
15 out by the Bayrob Group, including Bogdan Nicolescu,
16 including Radu Miclaus to infect as many computers as
17 possible to bring them online, so they can send spam to
18 infect more people, so they can do more auto fraud and so
19 they can cryptomine.

20 And it is not just what is on here; it is
21 also what links back to the command and control server
22 because the command and control server is that witness
23 that is always watching over this case because this is
24 what makes the Bayrob Trojan run.

25 This is where the information from the

1 Bayrob Trojan sits, and what do we know about that? Look
2 to Government's Exhibits 1854, Government's Exhibit 1856,
3 hundreds and hundreds of e-mails and subject lines from
4 Bogdan Nicolescu at Master Fraud, Radu Miclaus as Minolta
5 9797 talking with other members of the Bayrob Group, line
6 after line after line about things you will see on the
7 directory tree, things you heard in evidence.

8 You will hear about the .PHP. You will see
9 lines about the .PHP files, and you heard from Ryan
10 MacFarlane and Liam O'Murchu and how the .PHP files were
11 necessary to run this Trojan.

12 Minor force; talked about minor force
13 earlier. You will hear — you will see lines about
14 ePoll. You will see lines about .exe.dep, and when you
15 see lines about .exe.dep, think back to a couple of
16 things.

17 Think back to the testimony of Liam O'Murchu
18 and Ryan MacFarlane who both said, you know, Liam
19 O'Murchu in his millions of lines of code review is a
20 buyer's sort of a specialist, he had never seen .exe.dep.

21 That's consistent with Ryan MacFarlane's
22 testimony, that 15 years in the FBI doing these sorts of
23 crimes he had never seen .exe.dep, but then he said,
24 looking at Exhibit 2069, 2-0-6-9, which is that Bayrob
25 code, he reviewed the code because Special Agent

1 MacFarlane is trained to read code, and he saw in that
2 code in the Bayrob Trojan code the .exe.dep.

3 And he said nothing could run without the
4 .exe.dep. It was a fingerprint. It was a fingerprint.
5 And when you see e-mails outside the command and control
6 server talking about those kinds of fingerprints and you
7 go back into the command and control server and you see
8 the fingerprints of .exe.dep, you see the fingerprints of
9 minor force inside and outside the command and control
10 server.

11 And then you see the fingerprints of Minolta
12 and his work spaces and Master Fraud in the command and
13 control server. This is beyond a reasonable doubt,
14 ladies and gentlemen, what that command and control
15 server was used for. It was used as part of the
16 conspiracy.

17 Now, ladies and gentlemen of the jury, you
18 might look at me and say "I don't see the Master Fraud
19 work space."

20 Ladies and gentlemen of the jury, this 29
21 pages, 28 pages, I apologize, this is Bogdan Nicolescu's
22 work space. The entire command and control server was
23 his work space and his fingerprints, and his identity is
24 all over it.

25 If you look at Exhibit 1141, if you look at

1 Exhibit 1741, 1204, you will see that all of these result
2 back to host sites that begin my 3, my 4, all over the
3 directory tree. You will see my SQL, and SQL with a
4 program, if you remember, that harvested e-mails and
5 organized data in the directory.

6 You will see my 4 drones, my, my, my, my,
7 my. Where else did we see my? MyeBay. MyeBay lives in
8 the command and control server. MyeBay exists and
9 justifies the existence of the command and control
10 server.

11 Whose eBay is it? Bogdan Nicolescu's.

12 Who is my 4 drone? Bogdan Nicolescu's.

13 Who is my whatever in the directory? Bogdan
14 Nicolescu's.

15 This is his work space. He didn't just have
16 one directory. He had the entire command and control
17 server.

18 And again, going back to the home computers
19 and -- well, he didn't find anything on the home
20 computers. First of all, they are encrypted, very well
21 encrypted, but ladies and gentlemen of the jury, use your
22 common sense. You are allowed to use your common sense.

23 If you are a criminal, where do you put
24 criminal matters? On a protected environment that takes
25 several steps to get to that. Nobody knows where it

1 exists or when you put it on a home computer that might
2 get raided, might get searched.

3 If you want to keep it close to your home,
4 the Government submits you LUKS encrypt it. You take
5 steps so it is harder to break into. The Government
6 submits that's what the testimony supports showing what
7 Nicolescu and Miclaus and everybody else did with their
8 home devices.

9 They encrypted it, so it is hard to break
10 into, but on the command and control server where they
11 felt safe, where they felt safe with their little
12 criminal clubhouse, that's when they could use their
13 names, and that's when they could speak more freely and
14 have their work spaces.

15 Just very briefly, I want to touch, too, on
16 the role of this code, the O'Murchu code, and they say,
17 well, that doesn't prove anything. That just inflames
18 the passion of the jury. What's the point of showing
19 that code?

20 Ladies and gentlemen of the jury, it is
21 Bogdan Nicolescu's code. He wrote it. And what does he
22 put in it? Does he put in information that is useful?
23 Sure. But he puts in a dig at the researcher, who is
24 looking into him.

25 There is no point except as to identify

1 "look at me. You don't know who I am, but I am taunting
2 you." That's the role of that code. That was a taunt by
3 the man who in high school and for most of his life has
4 been called a tampon.

5 That is what a man who is called a tampon
6 does, he gives himself a name Master Fraud, and when he
7 thinks that he can hide behind the name Master Fraud and
8 hide beyond encryption, then he goes out and taunts
9 people, and he taunts people, and he mocks people where
10 he thinks they can't find him. That's the point of that
11 code.

12 Ladies and gentlemen of the jury, look back
13 to the command and control server. Look back to all of
14 the evidence presented over these last two weeks, all of
15 the testimony.

16 You will see consistencies among the victims
17 of how they were victimized with members of the Bayrob
18 Group, how they were victimizing them. You will see
19 consistencies among the investigators, what they
20 received; again, how the Bayrob Group was communicating,
21 how they were operating when they thought nobody was
22 looking.

23 Watch that, ladies and gentlemen, but data
24 that was created and controlled by the Bayrob Group, by
25 Bogdan Nicolescu, by Radu Miclaus for the benefit of

1 themselves, for the benefit of the Bayrob group.

2 And again, when you go through the jury
3 instructions, when you go through the evidence — and I
4 am not going to go through count by count — but always
5 look at what the evidence showed in relation to those
6 Counts. Think about when you are looking at the wire
7 fraud the role of Donna Wolfe and Valetin Danet.

8 What were their roles? That was to
9 perpetuate a wire fraud. Donna Wolfe engaged in a wire
10 fraud — pardon me — Valetin Danet through his
11 activities made sure the money was transferred.

12 Look — when you are looking at Count 14,
13 remember the testimony of O'Murchu and of Special Agent
14 Ryan MacFarlane, that the computers were slowed down;
15 that there was damage to them.

16 Remember the victims; that they had to take
17 them to be fixed. And remember the Twitter page of
18 Radu Miclaus. The Twitter page talked about Ypool,
19 talked about cryptamining. That's your connection.
20 That's one of the connections. The other connection is
21 Minolta is talking about cryptamining in Exhibit 1854 and
22 1856 on e-mails.

23 Count 15, we have talked about. Count 15,
24 the connection to Defendant Radu Miclaus, to eBay, I
25 mean, 934 postings in Exhibit 1741 with fake eBay

1 trademarks, false and misleading trademark counts.

2 And we have talked about the victims. We
3 have talked about 16 through 20, about the aggravated
4 identity victims and how their credit cards were used and
5 they were possessed and how were they used and possessed
6 to support the criminal infrastructure of the Bayrob
7 Group, and that leads right into the money laundering.

8 Again, these schemes are all interrelated
9 because the overall scheme is defraud is people, making
10 money, moving money overseas to get the money out of
11 America.

12 And that's what the money laundering is
13 about. Everything the eBay Group did or the Bayrob Group
14 did was to move the money out of the U.S. back to
15 Romania.

16 They hosted servers to make their harvesting
17 more efficient, and they did that using stolen credit
18 cards. They have used mules. They used multiple layers
19 of mules, and they used false websites to trick people
20 into thinking they were doing a legitimate job; money
21 laundering, ladies and gentlemen.

22 Domain names, we have talked about that
23 enough. Look — and I am almost done here — but again,
24 when you get back to the jury chambers, look back to the
25 Jabber chats. If there is any doubt as to what the

1 intent of Radu Miclaus or Bogdan Nicolescu was, page 193
2 of the Jabber chats of Exhibit 367, obe, Bogdan Nicolescu
3 writes to Danet, "Romeo, we beat them. Now we really
4 have them but little money. But we have enough for a
5 loaf of bread, and I think power is more important
6 anyway. Last time we had money but no power."

7 Danet says "I don't know. We still do need
8 to make money.

9 "Nicolescu: We will.

Ladies and gentlemen of the jury, when you go back to deliberate, you are not going to leave your common sense at the door. You are not going to just look at the jury instructions independent and separate from the evidence, and you are not going to look at each piece of evidence separate and apart from all of the other testimony and all of the evidence.

17 The United States of America is not asking
18 you to do anything but to look at all of the evidence,
19 consider all of the testimony, put it within the
20 framework of the jury instructions, and return the only
21 verdict that the evidence and the testimony support,
22 which is guilty to all Counts for Bogdan Nicolescu,
23 guilty on all Counts as to Radu Miclaus.

24 Thank you very much.

25 THE COURT: Ladies and gentlemen, we will

1 take our luncheon recess. Please be downstairs at 1:30.
2 We will call for you at that time. This case is not
3 over. Do not form any opinion, do not talk about the
4 case. Have a good lunch.

5 All rise for the jury.

6 (Luncheon recess taken.)

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13 **AFTERNOON SESSION**

14 THE COURT: Folks, you may take the packet
15 off of your chairs and be seated.

16 Now, ladies and gentlemen, it is my personal
17 practice to give each one of the jurors a copy of my jury
18 instructions.

19 If you choose to follow along with me, which
20 I suggest that you do, please stay on the same page I am
21 on. Feel free to mark these up. You are going to be
22 allowed to take them back in with you in the jury room.

23 You must keep them in the jury room, but at
24 the conclusion of your deliberations, these will be
25 collected and shredded. So feel free to put your own

1 personal notes on them. Again, please stay on the same
2 page I am on.

3 Members of the jury, you may turn now to
4 page -- at the bottom it says page 1 after the cover
5 page.

6 Members of the jury, now it is time for me
7 to instruct you about the law that you must follow in
8 deciding this case. I will start by explaining your
9 duties and the general rules that apply in every criminal
10 case.

11 Then, I will explain the elements or parts
12 of the crimes that each Defendant is accused of
13 committing. Then, I will explain some rules that you
14 must use in evaluating particular testimony and evidence.

15 And last, I will explain the rules that you
16 must follow during your deliberations in the jury room
17 and the possible verdicts that you may return.

18 Please listen very carefully to everything I
19 say.

20 You have two main duties as jurors:

21 The first one is to decide what the facts
22 are from the evidence that you saw and heard here in
23 Court. Deciding what the facts are is your job, not
24 mine, and nothing that I have said or done during this
25 trial was meant to influence your decision about the

1 facts in any way.

2 Your second duty is to take the law that I
3 give you, apply it to the facts, and decide if the
4 Government has proved each Defendant guilty beyond a
5 reasonable doubt.

6 It is my job to instruct you about the law,
7 and you are bound by the oath that you took at the
8 beginning of the trial to follow the instructions that I
9 give you, even if you personally disagree with them.

10 This includes the instructions I gave you
11 before and during the trial and these instructions. All
12 of the instructions are important, and you should
13 consider them together as a whole.

14 The lawyers have talked about the law during
15 their arguments, but if what they said is different from
16 what I say, you must follow what I say. What I say about
17 the law controls.

18 Perform these duties fairly. Do not let any
19 bias, sympathy, or prejudice that you may feel toward one
20 side or the other influence your decision in any way.

21 As you know, each Defendant has pleaded not
22 guilty to the crime, crimes charged in the indictment.
23 The indictment is not evidence at all of guilt; it is
24 just the formal way that the Government tells each
25 Defendant what crime he is accused of committing.

1 It does not even raise any suspicion of
2 guilt. Instead each Defendant starts the trial with a
3 clean slate with no evidence at all against him, and the
4 law presumes that he is innocent.

5 This presumption of innocence stays with him
6 unless the Government presents evidence here in Court
7 that overcomes the presumption and convinces you beyond a
8 reasonable doubt that he is guilty.

9 This means that each Defendant has no
10 obligation to present any evidence at all or to prove to
11 you in any way that he is innocent. It is up to the
12 Government to prove that he is guilty, and this burden
13 stays on the Government from start to finish.

14 You must find each Defendant not guilty
15 unless the Government convinces you beyond a reasonable
16 doubt that he is guilty. The Government must prove every
17 element of the crime charged beyond a reasonable doubt.

18 Proof beyond a reasonable doubt does not
19 mean proof beyond all possible doubt. Possible doubts or
20 doubts based purely on speculation are not reasonable
21 doubts.

22 A reasonable doubt is a doubt based on
23 reason and common sense. It may arise from the evidence,
24 the lack of evidence, or the nature of the evidence.

25 Proof beyond a reasonable doubt means proof

1 which is so convincing that you would not hesitate to
2 rely and act on it in making the most important decisions
3 in your own lives.

4 If you are convinced that the Government has
5 proved a Defendant guilty beyond a reasonable doubt, say
6 so by returning a guilty verdict. If you are not
7 convinced, say so by returning a not guilty verdict.

8 You must make your decision based only on
9 the evidence that you saw and heard here in Court. Do
10 not let rumors, suspicions, or anything else that you may
11 have seen or heard outside of Court influence your
12 decision in any way.

13 The evidence in this case includes only what
14 the witnesses said while they were testifying under oath,
15 the exhibits that I allowed into evidence, and the
16 stipulations that the lawyers agreed to. Nothing else is
17 evidence.

18 The lawyers' statements and arguments are
19 not evidence. Their questions and objections are not
20 evidence. My legal rulings are not evidence, and my
21 comments and questions are not evidence.

22 During the trial, I did not let you hear the
23 answers to some of the questions that the lawyers asked.
24 I also ruled that you could not see some of the exhibits
25 that the lawyers wanted you to see, and sometimes I

1 ordered you to disregard things that you saw or heard or
2 I struck things from the record.

3 You must completely ignore all of these
4 things. Do not even think about them. Do not speculate
5 about what a witness might have said or what an exhibit
6 might have shown.

7 These things are not evidence, and you are
8 bound by your oath not to let them influence your
9 decision in any way.

10 Make your decision based only on the
11 evidence as I have defined it here and nothing else. You
12 should use your common sense in weighing the evidence.
13 Consider it in light of your everyday experience with
14 people and events and give it whatever weight you believe
15 it deserves.

16 If your experience tells you that certain
17 evidence reasonably leads to a conclusion, you are free
18 to reach that conclusion.

19 Now, some of you may have heard the terms
20 "direct evidence" and "circumstantial evidence."

21 Direct evidence is simply evidence like the
22 testimony of an eyewitness, which, if you believe it,
23 directly proves a fact.

24 If a witness testified that he saw it
25 raining outside and you believed him, that would be

1 direct evidence that it was raining.

2 Circumstantial evidence is simply a chain of
3 circumstances that indirectly proves a fact.

4 If someone walked into this courtroom
5 wearing a raincoat covered with drops of water and
6 carrying a wet umbrella, that would be circumstantial
7 evidence from which you could conclude that it was
8 raining.

9 It is your job to decide how much weight to
10 give the direct and circumstantial evidence. The law
11 makes no distinction between the weight that you should
12 give to either one or say that one is any better evidence
13 than the other.

14 You should consider all of the evidence,
15 both direct and circumstantial, and give it whatever
16 weight you believe it deserves.

17 Another part of your job as jurors is to
18 decide how credible or believable each witness was.

19 Now, this is your job, not mine. It is up
20 to you to decide if a witness' testimony was believable
21 and how much weight you think it deserves.

22 You are free to believe everything that a
23 witness said or only part of it or none of it at all.
24 But you should act reasonably and carefully in making
25 these decisions.

1 Let me suggest some things for you to
2 consider in evaluating each witness' testimony. Ask
3 yourself if the witness was able to clearly see or hear
4 the events. Sometimes even an honest witness not have
5 been able to see or hear what was happening and may make
6 a mistake.

7 Ask yourselves how good the witness' memory
8 seemed to be. Did the witness seem to be able to
9 accurately remember what happened?

10 Ask yourself if there was anything else that
11 may have interfered with the witness' ability to perceive
12 or remember the events. Ask yourself how the witness
13 acted while testifying.

14 Did the witness appear honest, or did the
15 witness appear to be lying? Ask yourself if the witness
16 had any relationship to the Government or the Defendant
17 or anything to gain or lose from the case that might
18 influence a witness' testimony.

19 Ask yourself if the witness had any bias or
20 prejudice or reason for testifying that might cause the
21 witness to lie or to slant the testimony in favor of one
22 side or the other.

23 Ask yourself if the witness testified
24 inconsistently while on the witness stand or if the
25 witness said or did something or failed to say or do

1 something at any other time that is inconsistent with
2 what the witness said while testifying.

3 If you believe that the witness was
4 inconsistent, ask yourself if this makes the witness'
5 testimony less believable. Sometimes it may; other times
6 it may not.

7 Consider whether the inconsistency was about
8 something important or about some unimportant detail.
9 Ask yourself if it seemed like an innocent mistake or if
10 it seemed deliberate.

11 And ask yourself how believable the witness'
12 testimony was in light of all the other. Was the
13 witness' testimony supported or contradicted by evidence
14 that you found believable?

15 If you believe that a witness' testimony was
16 contradicted by other evidence, remember that people
17 sometimes forget things, and that even two honest people
18 who witness the same event may not describe it exactly
19 the same way.

20 These are only some of the things that you
21 may consider in deciding how believable each witness was.
22 You may also consider other things that you think shed
23 some light on the witness' believability.

24 Use your common sense and your everyday
25 experience in dealing with other people, and then decide

1 what testimony you believe and how much weight you think
2 it deserves.

3 One more point about witnesses: Sometimes
4 jurors wonder if the number of witnesses who testified
5 makes any difference. Do not make any decisions based
6 only on the number of witnesses who testified.

7 What is more important is how believable the
8 witnesses were and how much weight you think their
9 testimony deserves. Concentrate on that, not the
10 numbers.

11 And there is one more general subject I want
12 to talk to you about before I begin explaining the
13 elements of — it should be crimes charged. The lawyers
14 for both sides objected to some of the things that were
15 said or done during the trial.

16 Do not hold that against either side. The
17 lawyers have a duty to object whenever they think that
18 something is not permitted by the rules of evidence.

19 Those rules are designed to make sure that
20 both sides receive a fair trial, and do not interpret my
21 rulings on their objections as any indication as how I
22 think the case should be decided.

23 My rulings were based on the rules of
24 evidence, not on how I feel about the case. Remember
25 that your decision must be based only on the evidence

1 that you saw and heard here in Court.

2 That concludes the part of my instructions
3 explaining your duties and general rules that apply in
4 every criminal case.

5 In a moment, I will explain the elements of
6 the crimes that each Defendant is accused of committing.
7 But before I do that, I want to emphasize that each
8 Defendant is only on trial for the particular crimes
9 charged in the indictment.

10 Your job is limited to deciding whether the
11 Government has proved the crimes charged. Also, keep in
12 mind that whether anyone else should be prosecuted and
13 convicted for a crime is not a proper matter for you to
14 consider.

15 The possible guilt of others is no defense
16 to a criminal charge. Your job is to decide if the
17 Government has proved each Defendant guilty.

18 Do not let the possible guilt of others
19 influence your decision in any way. The Defendants have
20 been charged with several crimes. The number of charges
21 is no evidence of guilt, and this should not influence
22 your decision in any way.

23 And in our system of justice, guilt or
24 innocence is personal and individual. It is your duty to
25 separately consider the evidence against each Defendant

1 on each charge and to return a separate verdict for each
2 of them.

3 For each one, you must decide whether the
4 Government has presented proof beyond a reasonable doubt
5 that a particular Defendant is guilty of a particular
6 charge.

7 Your decision on any one Defendant or
8 charge, whether it is guilty or not guilty, should
9 not influence your decision on another Defendant or
10 charges.

11 Next, I want to say a word about the date
12 mentioned in the indictment. The indictment charges that
13 the crimes happened on or about or in or around dates
14 stated for the various counts.

15 The Government does not have to prove
16 that the crimes happened on those exact dates, but the
17 Government must prove that the crimes happened reasonably
18 close to those dates.

19 Next, I want to explain something about
20 proving a Defendant's state of mind. Ordinarily, there
21 is no way that a Defendant's state of mind can be proved
22 directly because no one can read another person's mind
23 and tell what that person is thinking.

24 But a Defendant's state of mind can be
25 proved indirectly from the surrounding circumstances, and

1 this includes things like what the Defendant said, what
2 the Defendant did, how the Defendant acted, and any other
3 facts or circumstances in evidence that show what was in
4 the Defendant's mind.

5 You may also consider the natural and
6 probable results of any acts that each Defendant
7 knowingly did or did not do and whether it is reasonable
8 to conclude that the Defendant intended those results.

9 This, of course, is all for you to decide.

10 Although the indictment charges that the
11 statute was violated by acts that are connected by the
12 word "and," it is sufficient if the evidence establishes
13 a violation of the statute by any one of the acts
14 charged.

15 Of course, this must be proved beyond a
16 reasonable doubt.

17 Now, folks, the Court will provide you with
18 a copy of the indictment. Included in the indictment are
19 not only the counts but also general allegations
20 applicable to the counts.

21 Please remember that the indictment is not
22 evidence and may not be considered as evidence against
23 any Defendant.

24 Defendants Bogdan Nicolescu and Radu Miclaus
25 are charged in Count 1 with conspiracy to commit wire

1 fraud in violation of Title 18, United States Code,
2 Section 1343, all in violation of Title 18, United States
3 Code, Section 1349.

4 Counts 2 through 13 of the indictment charge
5 Defendants Bogdan Nicolescu and Radu Miclaus with wire
6 fraud in violation of Title 18, United States Code,
7 Section 1343.

8 Count 14 of the indictment charges
9 Defendants Bogdan Nicolescu and Radu Miclaus with
10 conspiracy to commit the crime of fraudulent access to
11 computers in violation of Title 18, United States Code,
12 Section 371.

13 Additionally, Defendants Bogdan Nicolescu
14 and Radu Miclaus are also charged with the following:

15 Count 15, conspiracy to traffic in
16 counterfeit service marks in violation of Title 18 United
17 States Code, Section 2320(a) (1);

18 Counts 16 through 20, aggravated identity
19 theft in violation of Title 18 United States Code,
20 Sections 1028A(a) (1) and (2);

21 Count 21, conspiracy to commit money
22 laundering in violation of Title 18 United States Code
23 Section 1956(h) .

24 Defendants Bogdan Nicolescu and Radu Miclaus
25 have pleaded not guilty to the charges. Each Defendant

1 has been charged with several counts of conspiracy to
2 commit various offenses.

3 In some instances, they have also been
4 charged with actually committing the underlying offenses
5 themselves. We call those underlying offenses,
6 substantive offenses.

7 Under the law, participating in a conspiracy
8 to commit a crime is an entirely separate and distinct
9 charge from the actual violation of the substantive
10 offense or offenses, which may be the object of the
11 conspiracy.

12 As I will instruct you in more detail later,
13 it is a crime for two or more people to conspire to
14 commit a criminal act, even if they never actually
15 achieve their goal.

16 What matters in a conspiracy is whether the
17 Defendant agreed to commit the underlying offense or
18 offenses, not whether his conduct would actually have
19 constituted that offense or offenses.

20 Therefore, all the elements of the
21 underlying substantive offense or offenses need not be
22 met in order for you to find that there was a conspiracy
23 to commit a specified underlying crime.

24 Now, elements of wire fraud.

25 Counts 2 through 13 of the indictment charge

1 each Defendant with wire fraud.

2 Count 1 charges conspiracy to commit wire
3 fraud, and Count 21 charges conspiracy to commit money
4 laundering, wherein wire fraud is one of the several
5 objects of the conspiracy.

6 For you to find each Defendant guilty of
7 wire fraud, you must find that the Government has proved
8 each and every one of the following elements beyond a
9 reasonable doubt:

10 First, that each Defendant knowingly
11 participated in, devised, and intended to devise a scheme
12 to defraud in order to obtain money or property, that is,
13 that victims transferred funds to U.S. based money mules
14 working for the Bayrob Group via wire transfer under the
15 incorrect belief that they were purchasing an actual item
16 listed on the eBay site.

17 In reality, each transaction involved a
18 non-existent item listed on a fraudulent eBay page
19 created by the Bayrob Group, which was injected on to the
20 computer — on to the victim's computer by the
21 Bayrob Trojan, each of which was an interstate or foreign
22 wire communication constituting a separate and distinct
23 offense.

24 Second, that the scheme included a material
25 misrepresentation or concealment of a material fact.

1 Third that each Defendant had the intent to
2 defraud.

3 And fourth, that each Defendant used wire
4 communications or caused another to use wire
5 communications in interstate or foreign commerce in
6 furtherance of the scheme.

7 Now, I will give you more detailed
8 instructions on some of these terms.

9 A scheme to defraud includes any plan or
10 course of action by which someone intends to deprive
11 another of money or property by means of false or
12 fraudulent pretenses, representations, or promises.

13 The term "false or fraudulent pretenses,
14 representations, or promises" means any false statements
15 or assertions that concern a material aspect of the
16 matter in question that were either known to be untrue
17 when made or made with reckless indifference to their
18 truth.

19 They include actual direct false statements
20 as well as half truths and the knowing concealment of
21 material facts.

22 An act is knowingly done if done voluntarily
23 and intentionally and not because of mistake or some
24 other innocent reason.

25 A misrepresentation or concealment is

1 material if it has a natural tendency to influence or is
2 capable of influencing the decision of a person of
3 ordinary prudence and comprehension.

4 To act with intent to defraud means to act
5 with an intent to deceive or cheat for the purpose of
6 either causing a financial loss to another or bringing
7 about a financial gain to one's self or to another
8 person.

9 To cause wire communications to be used is
10 to do an act with knowledge that the use of the
11 communications will follow in the ordinary course
12 of business or where such use can reasonably be
13 foreseen.

14 The term "interstate or foreign commerce"
15 includes wire communications which crossed a state line.
16 It is not necessary that the Government prove all of the
17 details alleged concerning the precise nature and purpose
18 of the scheme;

19 That the material transmitted by wire
20 communications was itself false or fraudulent;

21 That the alleged scheme actually succeeded
22 in defrauding anyone;

23 That the use of a wire communications was
24 intended as the specific or exclusive means of
25 accomplishing the alleged fraud;

1 That someone relied on the misrepresentation
2 or false statement, or that the Defendant obtained money
3 or property for his own benefit.

4 Count 1 of the indictment charges Defendants
5 Bogdan Nicolescu and Radu Miclaus with the crime of
6 conspiracy to commit wire fraud, Title 18, United States
7 Code, Section 1349, wherein wire fraud, Title 18 United
8 States Code, Section 1343 is the substantive offense of
9 conspiracy.

10 Now, the elements of wire fraud were
11 explained previously. I just explained them, so now I
12 am going to explain the conspiracy portion of the
13 charge.

14 It is a crime for two or more persons to
15 conspire or agree to commit a criminal act even if they
16 never actually achieve their goal. A conspiracy is a
17 kind of criminal partnership.

18 For you to find a Defendant guilty of the
19 conspiracy as charged in Count 1, the Government must
20 prove each and every one of the following elements beyond
21 a reasonable doubt.

22 First, that two or more persons conspired or
23 agreed to commit the crime of conspiracy;

24 Second, that the Defendant knowingly and
25 voluntarily joined the conspiracy. You must be convinced

1 that the Government has proved all of these elements
2 beyond a reasonable doubt in order to find a Defendant
3 guilty of the conspiracy charge.

4 And with regard to the first element, a
5 criminal agreement, the agreement must prove — strike
6 that — the Government must prove that two or more
7 persons conspired or agreed to cooperate with each other
8 to commit the crime of wire fraud.

9 This does not require proof of any formal
10 agreement, written or spoken, nor does this require
11 proof that everyone involved agreed on all of the
12 details.

13 But proof that people simply met together
14 from time to time and talked about common interests or
15 engaged in similar conduct is not enough to establish a
16 criminal agreement.

17 These are things that you may consider in
18 deciding whether the Government has proved an agreement,
19 but without more, they are not enough.

What the Government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people to cooperate with each other to commit the crime of wire fraud. This is essential.

25 An agreement can be proved indirectly by

1 facts and circumstances, which lead to a conclusion that
2 an agreement existed. But it is up to the Government to
3 convince you that such facts and circumstances existed in
4 this particular case.

5 If you are convinced that there was a
6 criminal agreement, then you must decide whether the
7 Government has proved — it should be that the Defendant
8 knowingly and voluntarily joined that agreement.
9 You must consider each Defendant separately in this
10 regard.

11 To convict any Defendant, the Government
12 must prove that he knew the conspiracy's main purpose,
13 and that he voluntarily joined it intending to help
14 advance or achieve its goals.

15 This does not require proof that a Defendant
16 knew everything about the conspiracy or everyone else
17 involved or that he was a member of it from the very
18 beginning.

19 Nor does it require proof that the Defendant
20 played a major role in the conspiracy or that his
21 connection to it was substantial. A slight role or
22 connection may be enough.

23 But proof that a Defendant simply knew about
24 a conspiracy or was present at times or associated with
25 members of the group is not enough, even if he approved

1 of what was happening or did not object to it.
2 Similarly, just because a Defendant may have done
3 something that happened to help a conspiracy does not
4 necessarily make him a conspirator.

5 These are all things you may consider in
6 deciding whether the Government has proved that a
7 Defendant joined a conspiracy, but without more, they are
8 not enough.

9 A Defendant's knowledge can be proved
10 indirectly by facts and circumstances, which lead to a
11 conclusion that he knew the conspiracy's main purpose.
12 But it is up to the Government to convince you that
13 such facts and circumstances existed in this particular
14 case.

15 Now, some of the people who may have been
16 involved in these events are not on trial. This does not
17 matter. There is no requirement that all members of a
18 conspiracy be charged and prosecuted or tried together in
19 one proceeding, nor is there any requirement that the
20 names of the other conspirators be known.

21 An indictment can charge a Defendant with
22 conspiracy involving people whose names are not known as
23 long as the Defendant — strike that — as long as the
24 Government can prove that the Defendant conspired with
25 one or more of them. Whether they are named or not does

1 not matter.

2 Now, some of the events that you have heard
3 about happened in other places. There is no requirement
4 that the entire conspiracy take place here in the
5 Northern District of Ohio.

6 But for you to return a guilty verdict on
7 the conspiracy charge, the Government must convince you
8 that either the agreement or one of the acts in
9 furtherance took place here in the Northern District of
10 Ohio.

11 Unlike all the other elements that I have
12 described, this is just a fact that the Government only
13 has to prove by a preponderance of the evidence. This
14 means that the Government only has to convince you that
15 it is more likely than not that part of the conspiracy
16 took place here.

17 Remember that all the other elements I have
18 described must be proved beyond a reasonable doubt.

19 Now, folks, there are two ways that the
20 Government can prove the Defendants' guilt of the crime
21 of the conspiracy to commit wire fraud. The first is
22 convincing you that they personally committed or
23 participated in this crime.

24 The second is based on the legal rule that
25 all members of a conspiracy are responsible for acts

1 committed by the other members as long as those acts are
2 committed to help advance the conspiracy and are within
3 the reasonably foreseeable scope of the agreement.

4 In other words, under certain circumstances,
5 the act of one conspirator may be treated as the act of
6 all. This means that all the conspirators may be
7 convicted of a crime committed by only one of them, even
8 though they did not personally participate in that crime
9 themselves.

10 But for you to find any one of the
11 Defendants guilty of conspiracy to commit wire fraud
12 based on this legal rule, you must be convinced that the
13 Government has proved each and every one of the following
14 elements beyond a reasonable doubt:

15 First, that the Defendant was a member of
16 the conspiracy charged in Count 1 of the indictment;

17 Second, that after he joined the conspiracy
18 and while he was still a member of it, one or more of the
19 other members committed the crime of conspiracy to commit
20 wire fraud;

21 Third, that this crime was committed to help
22 advance the conspiracy;

23 And fourth, that this crime was within the
24 reasonably foreseeable scope of the unlawful project.

25 The crime must have been one that the

1 Defendant could have reasonably anticipated as a
2 necessary or natural consequence of the agreement. This
3 does not require proof that each Defendant specifically
4 agreed or knew that the crime would be committed, but the
5 Government must prove that the crime was within the
6 reasonable contemplation of the persons who participated
7 in the conspiracy.

8 No Defendant is responsible for the acts of
9 others that go beyond the fair scope of the agreement as
10 the Defendant understood it.

11 Conspiracy to commit an offense. Basic
12 elements as charged in Count 14, overt act required.

13 Count 14 of the indictment accuses the
14 Defendants of a conspiracy to commit the crime of
15 fraudulent access to computers in violation of federal
16 law.

17 It is a crime for two or more persons to
18 conspire or agree to commit a criminal act even if they
19 never actually achieve their goal. A conspiracy, again,
20 is a kind of criminal partnership.

21 For you to find a Defendant guilty of the
22 conspiracy as charged in Count 14, the Government must
23 prove each and every one of the following elements beyond
24 a reasonable doubt:

25 First, that two or more persons conspired or

1 agreed to commit the crime of fraudulent access to
2 computers;

3 Second, that the Defendant knowingly and
4 voluntarily joined the conspiracy;

5 And third, that a member of the conspiracy
6 did one of the overt acts described in the indictment for
7 the purpose of advancing or helping the conspiracy.

8 You must be convinced that the Government
9 has proved all of these elements beyond a reasonable
10 doubt in order to find any Defendant guilty of the
11 conspiracy charge.

12 Note that while this conspiracy charge
13 requires proof of an overt act, the other conspiracy
14 charges, Count 1, wire fraud conspiracy, Count 21, money
15 laundering conspiracy do not require proof of an overt
16 act.

17 The third element that the Government must
18 prove is that a member of the conspiracy did one of the
19 overt acts described in the indictment for the purpose of
20 advancing or helping the conspiracy.

21 The indictment lists overt acts. The
22 Government does not have to prove that all these acts
23 were committed or that any of these acts were themselves
24 illegal, but the Government must prove that at least one
25 of these acts was committed by a member of the

1 conspiracy, and that it was committed for the purpose of
2 advancing or helping the conspiracy. This is essential.

3 Count 14 of the indictment charges
4 Defendants Bogdan Nicolescu and Radu Miclaus with the
5 crime of conspiracy, Title 18 United States Code, Section
6 371, wherein several subsections of the crime of
7 fraudulent access to computers, Title 18, United States
8 Code Section 1030 are the substantive offenses of the
9 conspiracy, obtaining information by computer, protected
10 computer.

11 For you to find each Defendant guilty of
12 conspiring to commit fraudulent access to computers as
13 defined in Title 18, Section 1030(a) (2) (C) of the United
14 States Code, the Government must prove that the
15 Defendants conspired to commit the following offense:

16 First, Defendants conspired to intentionally
17 access a computer without authorization to obtain
18 information from the computer;

19 And second, the computer from which the
20 information was to be obtained was to be a computer that
21 was at times used in or affected commerce or
22 communication between one state and other states or
23 between the state of the United States and a foreign
24 country.

25 For you to find each Defendant guilty of

1 conspiracy to access a computer to defraud and obtain
2 value as defined in Title 18, Section 1030(a) (4) of the
3 United States Code, the Government must prove that each
4 of the Defendants conspired to commit the following
5 crime:

6 First, each Defendant conspired to knowingly
7 access without authorization a computer that was at times
8 used in or affected commerce or communication between one
9 state and other state or states or between a state of the
10 United States and a foreign country;

11 Second, each Defendant conspired to do so
12 with the intent to defraud;

13 Third, each Defendant intended to further
14 their fraud by accessing the computer without
15 authorization;

16 And fourth, each Defendant conspired to
17 obtain something of value other than the mere use of the
18 victim's computer by accessing the computer without
19 authorization.

20 Intentional damage to a protected computer.

21 For you to find each Defendant guilty of
22 conspiring to damage a protected computer as defined in
23 Title 18, Section 1030(a) (5) (A) of the United States
24 Code, the Government must prove each of the Defendants
25 conspired to commit the following crime:

1 First, each Defendant conspired to knowingly
2 cause the transmission of a program, information, code,
3 or command to a computer;

4 Second, each Defendant conspired to
5 intentionally impair without authorization the integrity
6 or availability of data programs, systems information as
7 a result of the transmission;

8 And third, the computer the Defendants
9 intended to impair was at times used in or affected
10 commerce or communication between one state and other
11 states or between a state of the United States and a
12 foreign country;

13 And fourth, the Defendants conspired to so
14 impair ten or more computers in a one-year period.

15 If you find that the Government has
16 established the first three elements but not the fourth
17 element, that is, Defendants conspired to impair ten or
18 more computers in a one-year period, you should find the
19 Defendant guilty of misdemeanor conspiring to damage a
20 protected computer as defined in Title 18, Section
21 1030 (a) (5) (A) of the United States Code.

22 However, if you find Defendants guilty of
23 either one of the other two objects of the conspiracy,
24 obtaining information by computer or computer fraud,
25 you should find the Defendant guilty of a felony for

1 Count 14.

2 Count 15 of the indictment charges Defendant
3 Bogdan Nicolescu and Radu Miclaus with the crime of
4 conspiracy to traffic in counterfeit service marks, Title
5 18 United States Code, Section 2320(a) (1), wherein
6 trafficking in counterfeit service marks is the
7 substantive offense of the conspiracy.

8 Title 18 United States Code, Section 2320
9 makes it a crime for a person to intentionally traffic in
10 goods or services and knowingly use a counterfeit mark on
11 or in connection with such goods or services.

12 For you to find each Defendant guilty of
13 this crime, you must be convinced that the Government has
14 proved that the Defendants conspired to commit the
15 following crime:

16 First, that each Defendant conspired to
17 traffic in goods or services, and to traffic means to
18 transport, transfer, or dispose of to another for
19 purposes of commercial advantage or private financial
20 gain or to import, export, obtain control of, or possess
21 with intent to do transport, transfer, or otherwise
22 dispose of.

23 Financial gain includes the receipt or
24 expected receipt of anything of value.

25 Second, that such trafficking was

1 intentional. An act is intentional if done deliberately
2 or on purpose.

3 The Government, however, is not required to
4 prove that the Defendant intended to violate the law or
5 even that the Defendant knew his or her conduct was
6 illegal. The Government need only show that the
7 Defendant acted deliberately or on purpose.

8 Third, that each Defendant conspired to use
9 a counterfeit mark on or in connection with such goods
10 and services, and a counterfeit mark is a spurious or
11 false mark used in connection with trafficking in any
12 goods, services, documentation, or packaging.

13 It is identical with or substantially
14 indistinguishable from a mark registered on the principal
15 register in the United States Patent and Trademark Office
16 and in use, whether or not the Defendant knew such mark
17 was so registered;

18 That the Defendants conspired to use in
19 connection with the same goods or services for which the
20 mark was then registered with the United States Patent
21 and Trademark Office or consisted of documentation or
22 packaging of any type or nature that was designed,
23 marketed, or intended to be used on or in connection with
24 the goods or services for which the mark was then
25 registered in the United States Patent Office, and the

1 use of a mark and the manner in which the Defendants
2 conspired to use it was likely to cause confusion, to
3 cause mistake, or to deceive;

4 And fourth, that each Defendant knew that
5 the mark he was conspiring to so use was counterfeit.

6 Count 21 of the indictment charges Defendant
7 Bogdan Nicolescu and Radu Miclaus with the crime of
8 conspiracy to commit money laundering, Title 18 United
9 States Code, Section 1956(h), wherein the crimes of wire
10 fraud, fraudulent access to computers, and trafficking in
11 counterfeit service marks are the substantive offenses of
12 the conspiracy.

13 Count 21 of the indictment charges each
14 Defendant with conspiracy to conduct a financial
15 transaction knowing the transaction is designed to
16 conceal facts related to proceeds in violation of federal
17 law.

18 For you to find the Defendant guilty of this
19 crime, you must find that the Government has proved the
20 Defendants conspired to commit the following crime:

21 First, that each Defendant conspired to
22 conduct a financial transaction;

23 Second, that the financial transaction was
24 to involve property that represented the proceeds of wire
25 fraud, fraudulent access to computers, or trafficking in

1 goods or services bearing counterfeit marks;

2 Third, that each Defendant knew that the
3 property to be involved in the financial transaction
4 represented the proceeds from some form of unlawful
5 activity;

6 Fourth, that each Defendant knew that the
7 transaction would be designed in whole or in part to
8 conceal or disguise the nature, location, source,
9 ownership, or control of the proceeds of wire fraud,
10 fraudulent access to computers, or trafficking in goods
11 or services bearing counterfeit marks.

12 Count 21 of the indictment charges each
13 Defendant with conspiring to transport, transmit, or
14 transfer a monetary instrument or funds in violation of
15 federal law.

16 For you to find each Defendant guilty of
17 this crime, you must find that the Government has proved
18 that each Defendant conspired to commit the following
19 crime;

20 First, that each Defendant conspired to
21 transport, transmit, or transfer a monetary instrument or
22 funds;

23 Second, that monetary instrument or funds
24 Defendants conspired to transport, transmit, or transfer
25 was to be from a place in the United States to or through

1 a place outside the United States;

2 Third, that each Defendant knew that the
3 monetary instrument or funds involved in the transport,
4 transmission, or transfer was to represent the proceeds
5 of some form of unlawful activity;

6 Fourth, that each Defendant knew that the
7 transportation, transmission, or transfer was to be
8 designed in whole or in part to conceal or disguise the
9 nature, location, source, ownership, control of the
10 proceeds of wire fraud, fraudulent access to computers,
11 or trafficking in goods or services bearing counterfeit
12 marks.

13 Now, I will give you more detailed
14 instructions on some of these terms.

15 The term "monetary instruments" means coin
16 or currency of the United States or any other country,
17 travelers checks, personal checks, bank checks, money
18 orders, or investment securities or negotiable
19 instruments in bearer form or otherwise in such form that
20 title passes upon delivery.

21 The word "proceeds" means any property
22 derived from, obtained, or retained directly or
23 indirectly through some form of unlawful activity,
24 including the gross receipts of such activity.

25 For you to find any one of the Defendants

1 guilty of the conspiracy as charged in Count 21, the
2 Government must prove each and every one of the following
3 elements beyond a reasonable doubt:

4 First, that two or more persons conspired or
5 agreed to commit the crime of conspiracy to commit money
6 laundering;

7 Second, that the Defendant knowingly and
8 voluntarily joined the conspiracy;

9 You must be convinced that the Government
10 has proved all of these elements beyond a reasonable
11 doubt in order to find any one of these Defendants guilty
12 of the conspiracy charged.

13 Counts 16 through 20 of the indictment
14 charge Defendants Bogdan Nicolescu and Radu Miclaus with
15 the crime of aggravated identity theft, Title 18 United
16 States Code, Sections 1028A(a) (1) and 2.

17 Count 16 through 20 of the indictment charge
18 each Defendant with using a means of identification of
19 another person during and in relation to a felony
20 violation listed in the statute.

21 For you to find each Defendant guilty of
22 this crime, you must find that the Government has proved
23 each and every one of the following elements beyond a
24 reasonable doubt.

25 First, that each Defendant committed the

1 following violation charged in Count 16 through 20. The
2 violation charged in Count 16 through 20 is a felony
3 violation listed in the statute;

4 Second, that each Defendant knowingly used a
5 means of identification of another person without lawful
6 authority;

7 Third, that each Defendant knew the means of
8 identification belonged to another person;

9 Fourth, that the use was during and in
10 relation to the crime charged in Counts 16 through 20;

11 Now, I will give you more detailed
12 instructions on some of these terms. The term "means of
13 identification" is defined as any name or number that may
14 be used to identify a specific individual, including any
15 name, Social Security number, date of birth, official
16 Government issued driver's license or identification
17 number, alien registration number, Government passport
18 number, employer or taxpayer identification number,
19 unique biometric data such as fingerprint, voice print,
20 retina or iris image or other unique physical
21 representation, unique electronic identification number,
22 address, or routing code or telecommunication identifying
23 information or access device.

24 The term "use" means active employment of
25 the means of identification during and in relation to the

1 crime charged in Count 16 through 20. Active employment
2 includes activity such as displaying or bartering. "Use"
3 also includes a person's reference to a means of
4 identification in his possession for the purpose of
5 helping to commit the crime charged in Counts 16 through
6 20.

7 An act is done knowingly if done voluntarily
8 and intentionally and not because of mistake or accident
9 or other innocent reason.

10 The Government is not required to prove that
11 the Defendant knew that his actions violated any
12 particular provision of law or even that his actions
13 violated the law at all. Ignorance of the law is not a
14 defense to this crime.

15 The phrase "without lawful authority" does
16 not require that the Defendant stole the means of
17 identification, information from another person but
18 includes the Defendant obtaining that information
19 from another person with that person's permission or
20 consent.

21 The term "during and in relation to"
22 requires that the means of identification have some
23 purpose or effect with respect to the crime charged in
24 Counts 16 through 20. In other words, the means of
25 identification must facilitate or further or have the

1 potential of facilitating or furthering the crime charged
2 in Counts 16 through 20, and its presence or involvement
3 cannot be the result of accident or coincidence.

4 If you are convinced that the Government has
5 proved all of these elements, say so by returning a
6 guilty verdict on this charge. If you have a reasonable
7 doubt about any one of these elements, then you must find
8 the Defendant not guilty of this charge.

9 For you to find each Defendant guilty of
10 aggravated identity theft, it is not necessary for you to
11 find that each person committed the crime.

12 You may also find him guilty if he
13 intentionally helped or encouraged someone else to commit
14 the crime. A person who does this is called an aider and
15 abettor, but for you to find each Defendant guilty of
16 aggravated identity theft as an aider and abettor, you
17 must be convinced that the Government has proved each and
18 every one of the following elements beyond a reasonable
19 doubt:

20 First, that the crime of aggravated identity
21 theft was committed;

22 Second, that the Defendant helped to
23 commit the crime or encouraged someone else to commit the
24 crime;

25 And third, that the Defendant intended to

1 help commit or encourage the crime;

2 Proof that the Defendant may have known
3 about the crime, even if he was there when it was
4 committed, is not enough for you to find him guilty. You
5 can consider this in deciding whether the Government has
6 proved that he was an aider and abettor. But without
7 more it is not enough.

8 What the Government must prove is that the
9 Defendant did something to help or encourage the crime
10 with the intent that the crime be committed. For you to
11 find each Defendant guilty of aggravated identity theft,
12 it is not necessary for you to find that he personally
13 committed the act or acts charged in the indictment.

14 You may also find him guilty if he willfully
15 caused an act to be done, which would be a federal crime
16 if directly performed by him or another.

17 But for you to find each Defendant guilty of
18 aggravated identity theft you, must be convinced that the
19 Government has proved each and every one of the following
20 elements beyond a reasonable doubt:

21 First, that the Defendant caused another
22 person to commit the act of aggravated identity theft;

23 Second, if the Defendant or other person had
24 committed the act, it would have been the crime of
25 aggravated identity theft;

1 And third, that the Defendant willfully
2 caused the act to be done;

3 Proof that the Defendant may have known
4 about the crime, even if he was there when it was
5 committed, is not enough for you to find him guilty. You
6 may consider this in deciding whether the Government has
7 proved that he caused the act to be done, but without
8 more it is not enough.

9 What the Government must prove is that the
10 Defendant willfully did something to cause the acts to be
11 committed.

12 And folks, if you need a break to stand and
13 stretch, feel free. I know this is long and tedious.

14 (Pause.)

15 THE COURT: Now, if you find a Defendant
16 guilty in any of Counts 1 through 20, please continue
17 your deliberations as to that Defendant, as to whether he
18 violated — folks, is the 20 correct?

19 MR. McDONOUGH: Should be 21.

20 THE COURT: Yeah. Ladies and gentlemen,
21 that 20 should read 21. I do apologize.

22 So if you find the Defendant guilty in any
23 of Counts 1 through 21, please continue your
24 deliberations as to that Defendant as to whether he
25 violated 18 — Title 18 United States Code, Section

1 3559 (g) (1), knowingly falsely registering a domain name
2 and knowingly use that domain name in the course of an
3 offense.

4 For you to find each Defendant guilty of
5 false registration of a domain name, you must be
6 convinced that the Government has proved each and every
7 one of the following elements beyond a reasonable doubt;

8 First, the Defendant under consideration
9 knowingly falsely registered or caused to be falsely
10 registered any or all domain names specified in paragraph
11 168 of the indictment with regard to Counts through 21 in
12 the indictment;

13 And second, the Defendant under
14 consideration knowingly used any or all domain names
15 specified in paragraph 168 of the indictment with regard
16 to Counts 1 through 21 in the indictment in the course of
17 the commission of the crimes alleged in any of Counts 1
18 through 21.

19 The term "falsely registers" means registers
20 in a manner that prevents the effective identification of
21 or contact with the person who registers. The term
22 "domain name" means any alphanumeric designation, which
23 is registered with or assigned by any domain name
24 registrar, domain name registry, or other domain name
25 registration authority as part of an electronic address

1 on the internet.

2 Now, that concludes the part of my
3 instructions explaining the elements of the crimes.

4 Next, I will explain some rules that you must use in
5 considering some of the testimony and evidence.

6 A Defendant has an absolute right not to
7 testify or present evidence. The fact that he did not
8 testify or present any evidence cannot be considered by
9 you in any way. Do not even discuss it in your
10 deliberations.

11 Remember it is up to the Government to prove
12 the Defendant guilty beyond a reasonable doubt; it is not
13 up to the Defendant to prove that he is innocent.

14 You have heard the testimony of opinion
15 witnesses. You do not have to accept an opinion.

16 In deciding how much weight to give it, you
17 should consider the witness' qualifications and how he
18 reached his conclusions.

19 Also, consider the other factors discussed
20 in these instructions for weighing the credibility of
21 witnesses. Remember that you alone decide how much of a
22 witness' testimony to believe and how much weight it
23 deserves.

24 You have heard the testimony of witnesses
25 who testified to both facts and opinions. Each of these

1 types of testimony should be given the proper weight.

2 As to the testimony on facts, consider the
3 factors discussed earlier in these instructions for
4 weighing credibility of witnesses. As to the testimony
5 on opinions, you do not have to accept the opinion.

6 In deciding how much weight to give it, you
7 should consider the witness' qualifications and how he or
8 she reached his or her conclusions along with the other
9 factors discussed in these instructions for weighing the
10 credibility of witnesses.

11 Remember that you alone decide how much of a
12 witness' testimony to believe and how much weight it
13 deserves.

14 You have heard the testimony of witnesses
15 who were promised they will not be prosecuted in exchange
16 for cooperation. It is permissible for the Government to
17 make such a promise, but you should consider the
18 testimony with more caution than the testimony of other
19 witnesses.

20 Consider whether his testimony may have been
21 influenced by the Government's promise. Do not convict
22 the Defendant based on the unsupported testimony of such
23 a witness standing alone unless you believe his testimony
24 beyond a reasonable doubt.

25 You have heard the testimony of Tiberiu

1 Danet. You have also heard that he has involved in the
2 same crime that the Defendants are charged with
3 committing. You should consider the testimony with more
4 caution than the testimony of other witnesses.

5 Do not convict the Defendant based on the
6 unsupported testimony of such a witness standing alone
7 unless you believe his testimony beyond a reasonable
8 doubt.

9 The fact that Tiberiu Danet has pleaded
10 guilty to a crime is not evidence that the Defendant is
11 guilty, and you cannot consider this against the
12 Defendant in any way.

13 During the trial, you have seen counsel use
14 summaries, charts, drawings, calculations or similar
15 material, which were offered to assist in the
16 presentation and understanding of the evidence.

17 This material is not itself evidence and
18 must not be considered as proof of any facts.

19 And during the trial, you have seen or heard
20 summary of evidence in the form of chart, drawing,
21 calculation, testimony, or similar matter, and this
22 summary was admitted in evidence in addition to the
23 material it summarizes because it may assist you in
24 understanding the evidence that has been presented.

25 But the summary itself is not evidence of

1 the material it summarizes and is only as valid and
2 reliable as the underlying material it summarizes.

3 The Government and the Defendants have
4 agreed or stipulated to certain facts. Therefore, you
5 must accept the stipulated facts as proved.

6 Now, that concludes the part of my
7 instructions explaining the rules for considering some of
8 the testimony and evidence. Let me finish up by
9 explaining some things about your deliberations in the
10 jury room and your possible verdicts.

11 The first thing you should do in the jury
12 room is to choose someone to be your foreperson. This
13 person will help to guide your discussions and will speak
14 for you here in Court.

15 Once you start deliberating, do not talk to
16 the jury officer or to me or to anyone else except each
17 other about the case.

18 If you have any questions or messages, you
19 must write them down on a piece of paper, sign them, and
20 give them to the jury officer. The officer will give
21 them to me, and I will respond as soon as I can.

22 I may have to talk to the lawyers about what
23 you have asked, so it may take some time to get back to
24 you. Any questions or messages normally should be sent
25 to me through your foreperson, and one more thing about

1 messages.

7 Remember that you must make your decision
8 based only on the evidence that you saw and heard here in
9 Court. During your deliberations you must not
10 communicate with or provide any information to anyone by
11 any means about this case.

12 You may not use any electronic device or
13 media to communicate to anyone any information about this
14 case or to conduct any research about this case until I
15 accept your verdict.

16 You can only discuss the case in the jury
17 room with your fellow jurors during deliberations.

I expect you will inform me as soon as you
became aware of another juror's violation of these
instructions.

21 You may not use electronic means to
22 investigate or communicate about the case because it is
23 important that you decide this case based solely on the
24 evidence presented in this courtroom.

25 Information on the internet or available

1 through social media might be wrong, incomplete, or
2 inaccurate. You are only permitted to discuss the case
3 with your fellow jurors during deliberations because they
4 have seen and heard the same evidence you have.

5 In our judicial system, it is important that
6 you are not influenced by anything or anyone outside this
7 courtroom.

8 Otherwise, your decision may be based on
9 information known only by you and not your fellow jurors
10 or the parties in the case.

11 This would unfairly and adversely impact the
12 judicial process. A juror who violates these
13 restrictions jeopardizes the fairness of these
14 proceedings, and a mistrial could result, which would
15 require the entire trial process to start over.

16 Now, folks, your verdict, whether it is
17 guilty or not guilty, must be unanimous as to each count.
18 To find each Defendant guilty of a particular count,
19 every one of you must agree that the Government has
20 overcome the presumption of innocence with evidence that
21 proves his guilt beyond a reasonable doubt.

22 To find him not guilty of a particular
23 count, every one of you must agree that the Government
24 has failed to convince you beyond a reasonable doubt.
25 Either way, guilty or not guilty, your verdict must be

1 unanimous as to each count.

2 Now that all the evidence is in and the
3 arguments are completed, you are free to talk about the
4 case in the jury room. In fact, it is your duty to talk
5 with each other about the evidence and to make every
6 reasonable effort you can to reach unanimous agreement.

7 Talk with each other, listen carefully and
8 respectfully to each other's views, and keep an open mind
9 as you listen to what your fellow jurors have to say.

10 Try your best to work out your differences.
11 Do not hesitate to change your mind if you are convinced
12 that other jurors are right and that your original
13 position was wrong, but do not ever change your mind just
14 because other jurors see things differently or just to
15 get the case over with.

16 In the end, your vote must be exactly that,
17 your own vote. It is important for you to reach
18 unanimous agreement but only if you can do so honestly
19 and in good conscience.

20 No one will be allowed to hear your
21 discussions in the jury room, and no record will be made
22 of what you say. So you should all feel free to speak
23 your minds. Listen carefully to what the other jurors
24 have to say, and then decide for yourself if the
25 Government has proved the Defendant guilty beyond a

1 reasonable doubt.

2 If you decide that the Government has proved
3 each Defendant guilty, then it will be my job to decide
4 what the appropriate punishment should be. Deciding what
5 the punishment should be is my job, not yours.

6 It would violent your oaths as jurors to
7 even consider the possible punishment in deciding your
8 verdict. Your job is to look at the evidence and decide
9 if the Government has proved each Defendant guilty beyond
10 a reasonable doubt.

11 Now, ladies and gentlemen, I have prepared a
12 verdict form for you where you are going to record your
13 verdict. I do believe it will be self-explanatory. Let
14 me go over it with you, review it with you just very
15 briefly.

16 With respect to each count of the indictment
17 listed below in which each Defendant is charged with the
18 crimes listed below, we, the jury, having been duly
19 impaneled and sworn find the Defendant — the first
20 column states the charge.

21 The second column is for Mr. Bogdan
22 Nicolescu.

23 The third column is for Mr. Radu Miclaus.

24 And under each individual, there are the
25 words "guilty" and the words "not guilty." So for each

1 charge and each Defendant, you will check either the word
2 "guilty" or the words "not guilty" as to each and as to
3 each count.

4 And again, I believe it will be
5 self-explanatory. As for Count 14, you are going to see
6 on the verdict form — I am still talking about the
7 verdict form, next to Count 14, you are going to see a
8 footnote, footnote 1, and I am going to read the footnote
9 for you.

10 If you select guilty only of misdemeanor —
11 so for 14, for each Defendant, there is a box for
12 "guilty," a box for "not guilty," a box for "guilty only
13 of misdemeanor," and then the footnote explains this
14 means that you have found three things if you select
15 guilty only of misdemeanor.

16 First, if you found the Defendant is not
17 guilty of conspiracy to commit 18 U.S.C. 1030(a) (2) (3),
18 intentionally accessing the protected computer without
19 authorization and obtaining information for commercial
20 advantage or private financial gain;

21 Second, you have found the Defendant is not
22 guilty of conspiring to commit 18 U.S.C. 1030(a) (4),
23 intentionally accessing a protected computer without
24 authorization to further intended fraud and obtain
25 something of value;

Third, you have found the Defendant is not guilty of the felony version of 1030(a) (5) (A) and (c) (4) (B) because the Government has failed to prove beyond a reasonable doubt that the Defendants conspired to impair ten or more computers in a year period, but that the Government has otherwise proved beyond a reasonable doubt that the Defendant conspired to commit 1030(a) (5) (A), intentionally causing damage to a protected computer.

10 Then, ladies and gentlemen, after going
11 through the first two pages, which lists the 21 Counts,
12 then it reads as follows:

With respect to each domain listed below, we find that each Defendant knowingly falsely registered or caused to be falsely registered the domain name specified in the indictment with regard to Counts 1 through 21 and knowingly used that domain name in the course of the commission of the fraud schemes alleged in Counts 1 through 21 as noted below.

20 And then, folks, the first column lists the
21 domain name.

22 The second column is for Defendant
23 Nicolescu, guilty or not guilty. The third column
24 Defendant Miclaus, guilty or not guilty.

It goes on to page 4, 5, 6, 7, and 8. At

1 the bottom of the entire verdict form, which is page 8,
2 there are 12 signatures. It does not matter in which
3 order you sign, except the foreperson is to sign online
4 1, and it is so designated "foreperson." The foreperson
5 is to then place the date above his or her name and also
6 the date at the bottom.

7 Again, folks, I think it will be
8 self-explanatory. If you decide that the Government has
9 proved the charge against each Defendant beyond a
10 reasonable doubt, say so by having your foreperson mark
11 the appropriate place on the form.

12 If you decide that the Government has not
13 proved the charge against him beyond a reasonable doubt,
14 say so by having the foreperson mark the appropriate
15 place on the form.

16 If you decide that the Government has not
17 proved the charge against him, each of you should then
18 sign the form and return it to me. Let me finish up by
19 repeating something that I said to you earlier.

20 Nothing that I have said or done during this
21 trial was meant to influence your decision in any way.
22 You decide for yourselves if the Government has proved
23 each Defendant guilty beyond a reasonable doubt.

24 And remember, folks, if you elected to take
25 notes during the trial, your notes should be used only as

1 memory aids. You should not give your notes greater
2 weight than your independent recollection of the
3 evidence.

4 You should rely on your own independent
5 recollection of the evidence or lack of evidence, and you
6 should not be unduly influenced by the notes of other
7 jurors.

8 Notes are not entitled to any more weight
9 than the memory or impression of each juror. Whether you
10 took notes or not, each of you must form and express your
11 own opinion as to the facts of the case. With that, I
12 will now call counsel to side bar.

13 (Side bar held on the record.)

14 THE COURT: I do want to note that all of
15 the jury instructions that were just read to the jurors
16 were agreed to by all parties involved in the case. That
17 being said, I am now going to turn to the Government.

18 Any objections? Anything further?

19 MR. BROWN: No objections. Nothing further,
20 your Honor.

21 THE COURT: On behalf of the Defendant
22 Nicolescu?

23 MR. GOLDBERG: No objections, your Honor.

24 THE COURT: On behalf of Defendant Miclaus?

25 MR. O'SHEA: No objections, your Honor.

1 THE COURT: Gentlemen, I am going to ask
2 that you get all of the exhibits in order. After the
3 jurors are in the jury room, I am going to get you on the
4 record saying you are satisfied everything that's
5 supposed to go to the jury is going; everything that is
6 not supposed to go to the jurors is not going.

7 MR. O'SHEA: Thank you, Judge.

8 THE COURT: Anything?

9 MR. BROWN: No. That includes the
10 indictment?

11 THE COURT: That's right, but you need to
12 give me a clean copy of the indictment.

13 (Side bar concluded))

14 THE COURT: Now, at this time, ladies and
15 gentlemen, I would normally excuse our alternate jurors,
16 but we have excused them all. Ladies and gentlemen, you
17 are going to have with you in the jury room, again, each
18 one of you can take in your copy of the jury
19 instructions.

20 In fact, please do take your copy in. You
21 will have with you the verdict form, and you will have
22 all of the exhibits that you are entitled to. If you
23 don't have something, it means you are not entitled to
24 it.

25 When you deliberate, I must repeat, all

1 twelve of you must be present. You must be in that jury
2 room with both or all doors closed.

3 You cannot talk about this case to and from
4 the elevator, if you are down on seven, if you are at
5 Tower City, and of course, when you go home, you cannot
6 talk about this case with anyone until I have formally
7 excused you from any further jury service, which will not
8 occur until after your verdict has been formally read in
9 open Court.

10 Again, all twelve must be present in that
11 jury room with the doors closed.

12 Once you open those doors, you cannot talk
13 about this case when you walk the hallways, et cetera,
14 even to each other. It is not permitted.

15 With that, I now instruct you to retire and
16 commence your deliberations. All rise for the jury.

17 (Discussion held off the record.)

18 (Jury out.)

19 THE COURT: On behalf of the Government, are
20 you satisfied that everything that is supposed to go to
21 the jury is there and what's not supposed to go isn't
22 there?

23 MR. BROWN: The Government is satisfied,
24 your Honor.

25 THE COURT: On behalf of Defendant

1 Nicolescu.

2 MR. GOLDBERG: We are satisfied as well.

3 THE COURT: And Mr. Goldberg, that includes
4 any redactions that have been discussed?

5 MR. GOLDBERG: Yes, yes.

6 THE COURT: Mr. O'Shea, same question.

7 MR. O'SHEA: Satisfied as well, your Honor.

8 THE COURT: All right. Then I will ask
9 Mary, Stella, or whoever to take those in, and we are off
10 the record, George.

11 (Trial adjourned at 3:30 p.m.)

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14 C E R T I F I C A T E

15 I, George J. Staiduhar, Official Court
16 Reporter in and for the United States District Court,
17 for the Northern District of Ohio, Eastern Division,
18 do hereby certify that the foregoing is a true
19 and correct transcript of the proceedings herein.

20

21 s/George J. Staiduhar
22 George J. Staiduhar,
Official Court Reporter

23 U.S. District Court
24 801 W. Superior Ave., Suite 7-184
Cleveland, Ohio 44113
(216) 357-7128

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